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April 30, 1931

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PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

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Pages with the Editors

THE inevitable growth of the electric and gas utilities, not only in their legal, corporate bodies, but also in their technological aspects and in the extension of utility service over state boundary lines, is raising some very pertinent questions concerning the methods of regulating them—questions so important and so timely that they are bringing the state and Federal governments into conflict.

* *

To arrive at sound conclusions about economic, political and legal problems of this kind one must necessarily be fortified with facts; any judgment based on misinformation, misinterpretations and misunderstandings must necessarily be unsound.

* *

EVEN in such fundamental matters as the amount of electric power that crosses state lines, and the proportion of that amount to the total electric power generated, differences of opinion are advanced, different statistics are submitted and different analyses are made of figures.

* *

To aid our readers in understanding the problem, MR. WYTHE WILLIAMS was commissioned, as an independent, free-lance and unbiased observer, to make his own survey and to write down his estimate of this particular phase of the electric power situation as he sees it.

* *

THE leading article in this number of PUBLIC UTILITIES FORTNIGHTLY is the result.

* *

MR. WILLIAMS, who is nationally known as a journalist and magazine writer, was born in Pennsylvania in 1881; attended Ohio Wesleyan University, and began his newspaper career in 1905; for several years he was connected with the Hearst newspapers in Chicago and with the New York *World*.

* *

DURING the World War MR. WILLIAMS served as war correspondent to the New York *Times*, *Colliers* and the London *Daily Mail;* later he was special correspondent for *The Saturday Evening Post;* he is the author of several books, a member of several clubs, and a chevalier of the French Legion of Honor.

* *

THOMAS J. TINGLEY (whose article on "Going Value" starts on page 522), was born in New York in 1894; graduated from Johns Hopkins in 1916 with Phi Beta Kappa honors, and from Columbia University Law School in 1919, and began his law practice in Baltimore, where he is still located.

* *

IN 1926 MR. TINGLEY was appointed Peoples' Counsel, Maryland Public Service Commission, which position he resigned three years later; in 1922 he annotated the Public Service Commission Law of Maryland.

* *

OSWALD WEST (whose article about Oregon's unique experiment with a one-man utility commission may be found on pages 542 to 546 of this number), has something more than a casual knowledge of regulatory problems in his home state, because he was for several years not only an aggressive member of the Oregon Railroad Commission (1907 to 1910) but he has also been governor (1911 to 1915).

* *

WHILE he was born in Canada in 1873, MR. WEST moved to Oregon at an early age and began his career as a butcher's boy; from that he graduated to messenger, bank teller, bank official, state land commissioner—and finally

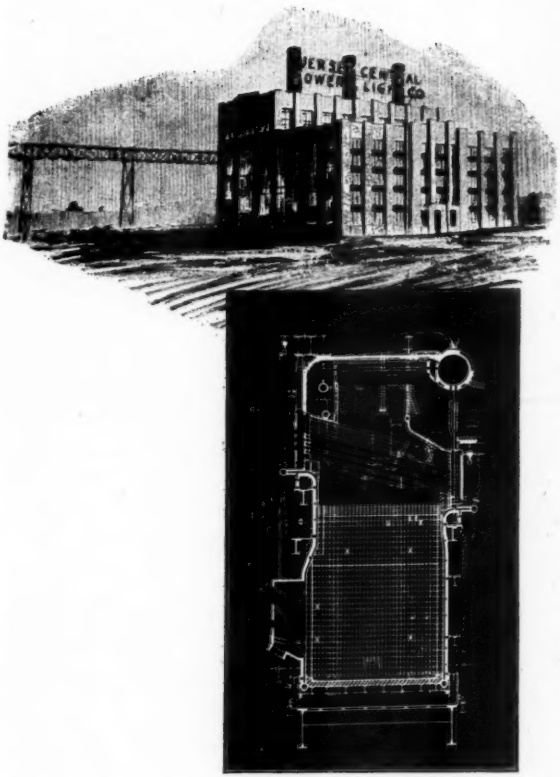
(*Continued on page VIII*)

WYTHE WILLIAMS

". . . . If Federal control is taken over the electrical companies engaged in 5 per cent of the total electrical supply, it is certain that immediately a great conflict with state authorities will begin."

(SEE PAGE 515)

THREE BAILEY SLAG-TAP FURNACES FOR 1400-LB. PRESSURE AT SOUTH AMBOY STATION



Arrangement of one of the three Babcock & Wilcox Boilers and Bailey Slag-Tap Furnaces at South Amboy. Each boiler has a maximum steaming capacity of 280,000 lbs. of steam per hour.

BAILEY Water-Cooled Slag-Tap Furnaces — designed for 1400 pound pressure — are serving three pulverized-coal-fired boilers at the South Amboy Station of the Jersey Central Power and Light Company, South Amboy, N. J.

An important feature of the furnaces is their great mechanical strength. The water-cooling tubes are reinforced with metal blocks fastened securely to the tubes. The tubes are prevented from spreading and the wall is unified by horizontal rows of tie clamps mounted on the wall at regular intervals.

The complete wall is reinforced by buckstay clamps which are tied in with the boiler columns with provision for expansion. The wall assembly, therefore, is very strong structurally and well able to resist the usual pressure, temperature and loading stresses.

Bailey Blocks, in addition to strengthening the wall, safeguard the tubes from failure due to flame impingement. The physical properties of the tubes remain unchanged even when the furnace is subjected to severe service, and temperature change.

Let our Engineers discuss your furnace problems with you—or we will gladly send you descriptive information on Bailey Furnaces.

FULLER LEHIGH COMPANY
A Babcock & Wilcox Organization
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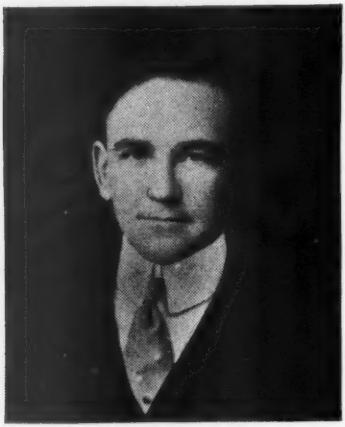
PULVERIZED-COAL EQUIPMENT ~ WATER-COOLED FURNACE WALLS 214



OSWALD WEST

". . . . The new commissioner (in Oregon) was prompt to declare that hereafter the people would have a champion on the job and that their rights would be protected . . . . We are going to learn something new about constitutional law."

(SEE PAGE 542)

WILLIAM J. TINGLEY

". . . . It has been said that the mental processes leading to the final determination of the sum to be allowed for 'going value' are nothing more than a whimsical adventure in an unblazed forest of speculation."

(SEE PAGE 522)

he was honored by the highest gift which the people of his state could bestow.

* *

WHILE he was serving on the Railroad Commission reports were received that a certain intra-state railway was in a deplorable physical condition—reports which were vehemently both denied and reiterated; COMMISSIONER WEST thereupon discarded both claims and set out on an inspection tour of his own, walking the tracks for the entire distance of the road.

* *

WHEN he returned he not only had the information he sought at first hand, but he brought back with him some of the railroad spikes which he had been able to pluck from the ties with his own fingers.

* *

MR. WEST'S contribution to this issue of PUBLIC UTILITIES FORTNIGHTLY is the first of a series that treat of the very significant and spirited arguments that are centering about utility regulation in Oregon—and which may well spread over into other states.

* *

CURTIS HODGES, who comments upon the public utility press representative as the newspaper editor sees him (pages 532 to 539), was born a Hoosier and is a newspaperman of twenty years' experience—including four years as managing editor and general manager of the Indianapolis *News;* he is a frequent contributor to the magazines.

IN the coming issue of PUBLIC UTILITIES FORTNIGHTLY will appear a comprehensive review and analysis of a very recent ruling that is of real, not to say imminent concern not only to the electric railway utilities of the country, but also to the regulatory bodies that have exercised authority over them—and to bankers and brokers who have handled electric railway securities and to the men and women who now own them.

* *

THIS searching interpretation of the peculiar predicament that faces the electric railway industry—a predicament that may well be taken seriously until a way out is revealed—is made by JOHN E. BENTON, general solicitor of the National Association of Railroad and Utilities Commissioners.

* *

THE economies of consolidated operation are recognized by the Massachusetts Department in the Worcester Gas Light Company case. But where there are particular advantages which would be lost upon consolidation the Department withholds its approval. (See page 338 of the *Public Utilities Reports* section in this number).

* *

THE New York Commission has also taken action recently upon a proposed consolidation. Disapproval followed because of the purchase price being four times the net value of the shares to be acquired. (See page 343).

—THE EDITORS.

II

APRIL

Reminders of Coming Events — **ALMANACK** — *Notable Events and Anniversaries*

30	T*h*	The transmission of pictures by radio between New York and London is put on a commercial basis as a public utility; 1926.

MAY

1	F	Horses were used for hauling the first cars to pass over the tracks built for the Pennsylvania railroad; 1829. First direct radio between New York and Panama; 1930.
2	S*a*	So hazardous did underwriters regard electric lights that the first ship equipped with them, the *Columbia*, steamed from New York without insurance; 1880.
3	S	Fresh strawberries sold in Chicago at $2 a quart upon the arrival of the first refrigerating car, invented by PARKER EARLE, from the South; 1866.
4	M	"There is a madman proposing to light the streets of London with—what do you think? Why, with smoke!" wrote WALTER SCOTT, referring to gas lamps; 1804.
5	T*u*	¶ THREE DATES TO REMEMBER: *N.E.L.A. convention opens June 8th; the A.E.R.A. convention Sept. 28th, and the A.G.A. convention opens Oct. 12th, 1931.*
6	W	The dawn of air transport was heralded by the first flight of a heavier-than-air plane invented by DR. LANGLEY—11 years before the Wright plane; 1896.
7	T*h*	The decline in American railroads was signalized by a drop of 32 per cent in the net operating income of the Class I roads in the first quarter; 1929.
8	F	The earliest system of street lighting of record was established in Rome, which erected oil-lamp posts on its leading streets; 200 A. D.
9	S*a*	The first gas well drilled in the U. S. was at Fredonia, N. Y., 1821; three years later it was used for lighting the hotel where LAFAYETTE was stopping; 1824.
10	S	The art of communication entered upon a new and prophetic era when two-way television was given its first successful demonstration; 1929.
11	M	The Syracuse & Utica Railroad Co. was incorporated with a capital of $800,000, and was authorized to charge not more than 4 cents a mile for passengers; 1836.
12	T*u*	Sceptics sneered at the first electrically operated train on SEIMEN and HALKES electric railway in Berlin; 1881.
13	W	The growing importance of the transportation utilities in the development of the Southwest was marked by the opening of the cantilever bridge at Memphis; 1892.

"Man moves over with each new generation into a bigger body, more awful, more reverent, and more free than he has been before."

—GERALD STANLEY LEE

"ON THE PUBLIC SERVICE." FROM THE PAINTING BY EVERETT WARNER

Public Utilities
FORTNIGHTLY

VOL. VII; No. 9 APRIL 30, 1931

The Political Bogey Behind the "Power Issue"

What the contention over the control of electricity that crosses state lines really means—and how it affects state regulation.

BY WYTHE WILLIAMS

"I CAN *imagine no more profound invasion of state sovereignty than the substitution of Federal for state control of electric utilities.*"

NOTHING ambiguous about that statement. On the contrary, it is clear, direct, precise, and, considering its high authorship, might seem sufficient to set at rest the present and persistent ballyhoo directed against the power industry, especially as regarding pending legislation for Federal control of power crossing state lines.

It is one of the traits of human nature that what man does not understand he fears. Today man in general may be excused an inability to define electricity any more clearly than did Benjamin Franklin. But it would appear that now a sufficient *understanding* of electricity has been reached to dispel fear—unless perhaps we omit the politicians from such a generalization. Anyhow, nowadays, in and about the lobbies of Washington officialdom, and in the press, we hear and read that "something is wrong with the power industry and its relation to the public."

From this arises the question:

"Is a situation created in which the public rights are no longer safeguarded?"

All of which premises the supposition that the electric utility industry is facing a period of political attack and investigation out of which new questions of public policy may arise. Or, in brief, that the power industry will become a political issue.

WE did not forget to name the author of the quotation that heads this article. Merely we followed a preference for the climacteric by deferring mention until now—for if this high authority accurately states the situation, so far as our very form of government is concerned, it would seem sufficient to give the politicians pause. Yes—now we do mention the name—Herbert Hoover, President of the United States, but only Secretary of Commerce five years ago when he made the declaration.

The statement is incorporated into the *pronunciamento* of Martin J. Insull in his Public Policy Committee Report presented at the 49th Convention of the National Electric Light Association, held at Atlantic City on May 19, 1926—a bit buried, but we managed to dig it up.

IT is the physical growth of power companies that has amazed the public—amazed it to the point of much misunderstanding. Therefore, in treating this question of interstate movement of electricity, which is the subject of such discussion, it is necessary to consult the map of the United States, showing the intricate system of interlocked lines that represent the transmission of power, long range and short.

In general appearance, this map is so comparable with the familiar railway map, that the casual observer appears quite ready to compare and to confuse the two entirely different problems of railways and electric power.

RAILWAY business is largely in long hauls, crossing many state lines. Eighty-five per cent of the total is interstate. On the face of the figures that we have been able to procure from the most competent sources, the exact reverse is the case with the power companies in that 85 per cent of all power used, is local. And this may be an *under* rather than an *over* statement. It is admitted that the amount of interstate power is increasing, but here are the best available figures to date.

The first study made by the Harvard School of Administration and Economics showed that only 9 per cent of the total current generated crossed state lines. This was in 1926.

In 1929 the Federal Trade Commission and also the National Electric Light Association studied the subject, the former raising the total to 15 and the latter only to 11 per cent. This difference is largely due to the methods of computation. The National Electric Light Association did not consider any international lines, such as from New York to Canada at Niagara Falls, or across the Mexican border at El Paso. Also, where the same line of current crossed a state line twice, the Federal Trade Commission counted twice, such as a particular line passing from West Virginia through a corner of Pennsylvania, then back into West Virginia, which the National Electric Light Association considered as domestic, or local current.

EVEN admitting the higher figure, as say for the year 1930, all the computations tend to prove that the tendency in electricity is the short haul. This would seem inherent in its very nature—that the nearer the generating system is to the place the current is used, so much the better, and the more economic. As a matter of fact big plants wherever possible are located in the place of the demand.

The average kilowatt of power generated in the United States moves only about ten miles before it is consumed.

In New York city, where the largest plants are located, every kilowatt of power used, except for a portion of Staten Island, is generated in the city. The same situation is true in almost every big city. Exceptions are St. Louis and Philadelphia, where, for economic reasons, the generating plants are across the nearby state boundaries of Illinois and Maryland. The maximum distance to which power is distributed in the United States is but 300 miles, and this, curiously, is not interstate traffic but is confined within the state of California. Of course, it is physically possible to carry current a longer distance but it is not done because it is not economical. Therefore, in light of these facts, it is unfair, for whoever seeks enlightenment, to any longer visualize electric transmission in the same manner as railway transmission.

UNDER our dual system of government the states have certain regulatory authority and the Federal Government has certain authority. All of the authority of the Federal Government over the transmission and distribution of electric power comes from its constitutional jurisdiction over interstate commerce. It follows then that 85 per cent of this power, which is local, should, therefore, be under the control of state governments.

The remaining 15 per cent (legally speaking for a moment), falls into two classes:

In the first place, take the case which involves only one company; that is to say, the company distributing to a certain locality which has its plant across a state line, such as at St. Louis. Obviously only one rate is involved—the price at which that company sells to the consumer. The rate to the St. Louis consumer is under the jurisdiction of and control of the Missouri commission, precisely as would be the case if the generating plant were in Missouri instead of

¶ "ALL *the computations tend to prove that the tendency in electricity is the short haul. This would seem inherent in its very nature—that the nearer the generating system is to the place the current is used, so much the better and the more economic. . . . In light of these facts, it is unfair for whoever seeks enlightenment, to any longer visualize electric transmission in the same manner as railway transmission.*"

across the Mississippi river in Illinois. It has already been decided by the Supreme Court of the United States several times, in cases involving the same principle, with gas instead of electric concerns, that when only one company is involved there is no need or reason for Federal intervention.

TAKE the case of Philadelphia, already cited, as supplied in part from Maryland. The Philadelphia Electric Company also has a plant located in Philadelphia, Pennsylvania. When the current from these two sources gets into the transmission system, it is impossible to say where it is generated. One day it may be the Maryland brand and the next day that of the Keystone state. It is impossible that the Pennsylvania commission should fix the rate for the power generated in Pennsylvania and the Federal Government for that created in Maryland, so one or the other must control the whole business. The general plan has been, inasmuch as only the one company is involved, that the state already has full authority and that the entire question be left to the state.

This particular kind of interstate power amounts, according to careful estimate, to about two thirds of the total of 15 per cent. In spite of the fact that this two thirds is interstate in character, it is today under the laws and subject to state jurisdiction, and, therefore, does not constitute anything of a gap in the regulatory system. No reason exists here for Federal action.

The remaining one third is of that character where two companies are involved, one company generating the current in one state and selling to a distributing company which supplies customers in a second state. Sales by one utility company to another utility company, whether used for lighting or industrial purposes, so far as the public is concerned, the only contact is with the second company. This rate has always been subject to the control of the state, and is regulated by the local authorities. The fact that the current comes from outside makes no difference to the consumer, legal or moral; he expects and intends to receive the same distinguished consideration from his state that he might obtain from the Federal Government.

So again we hark back to the supposition that the entire controversy breeds only in the imagination of the politician.

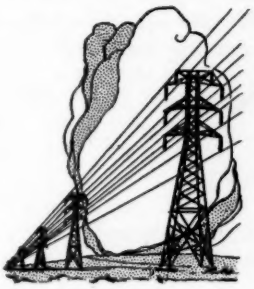
FROM the foregoing citations, the rate between two utility companies thus operating would not make Federal intervention either necessary or advisable, yet it is around this particular class of transmission over which the entire political hullabaloo has been raised.

Five per cent—or 4 per cent, according to the method of computation—sounds like very little, but considered state by state, we do find local situations where the percentage works out into big figures.

In Baltimore, for example, the distributor, the Consolidated Gas of Baltimore, buys current from the Penn Water and Power Company of Pennsylvania. The rate that the Baltimore company pays to the Penn Company is wholesale, and not regu-

The Clash Between the Federal and State Regulatory Bodies Involves Only 5 Per Cent of Power.

"If Federal control is taken over the companies engaged in this 5 per cent of the total electrical supply, it is certain that immediately a great conflict with the state authorities will begin, simply because every one of these companies doing the 5 per cent interstate business is also doing 95 per cent local business which is legitimately under the control of the state."



lated by anyone. But the rate in Baltimore is regulated by the Maryland commission. To sell wholesale power in large amounts necessitates a definite and constant supply. A glance at the rate schedules shows that the price for this kind of service is the lowest in the list. Actual figures covering the case today are not available. There has been no compilation which would show the average rate throughout the country, but it is safe to say that it would not exceed three quarters of a cent. Yet the average rate the household pays is 6 cents. So if the wholesale rate were even cut in two the final effect on the household rate would be *nil*. If you exclude the idea of collusion between these companies, it follows that the price must be low or the generating company cannot sell.

In considering the case of one company where the peak demand is at a certain hour, and of a second company where the peak demand is at another hour, we find that these companies frequently swap current, whether or not the current crosses state lines. In many instances no payment is made, but the debt is counted in kilowatt hours instead of dollars. Thus in summing up this phase of the controversy, we find of really small practical importance a situation bearing false labels of political magnitude.

If Federal control is taken over the companies engaged in this 5 per cent of the total electrical supply, it is certain that immediately a great conflict with the state authorities will begin, simply because every one of these companies doing the 5 per cent interstate business is also doing 95 per cent local business which is legitimately under the control of the state.

In all the records available no case can be found of collusion or excessive payments.

The present interstate situation has never caused the slightest embarrassment to the state commissions in carrying out their duties. In one case only—between Rhode Island and Massachusetts—the question arose touching the rate, not because it was

too high, but because it was too low. This situation resulted from a pre-war contract that carried on into a more expensive epoch. Happily, the difficulty was solved by one company absorbing the other.

Now, as to the burning issue before Congress—the proposals to "properly regulate" the power industry.

In the House, the Parker Bill seems for the moment to have disappeared, but in the Senate the Couzens Bill is now before the Interstate Commerce Committee. This bill was permitted to die with the present session because it is so "sloppily wrong." However, an eminent director of the power industry expects a new bill in the next Congress "with the crudities of the present bill smoothed out," and then, of course, the fight will be on in earnest.

There is an old saying that coming events cast shadows before; this may well apply to legislation covering the electric utilities of the nation. If legislation should be passed by Congress along the proposed lines it will be the first time in our history that the Federal Government has attempted to fix the selling price of any commodity merely because it has been transported across a state line.

It is evident that a person or a company generating electricity remains in the general category of manufacturer. He creates a product. He owns the materials from which it originates, the machinery which makes it, just as does the maker of clothes, boots, or airplanes. Naturally he argues that he may sell where he manufactures or extend his deliveries to another state. The article remains his until he has sold it, and whether he carries it by wagon, truck, railway, or electric wire makes no difference.

The difference between railway rates and power rates is that the price of the former is that of transportation, while the power rate is the selling price of the commodity. If the courts hold that the selling price of electricity can be fixed by the Federal Government because it has moved in interstate commerce, then does not the same question arise for every other commodity manufactured in the United States and moved across a state line?

But this the courts have not yet held, and we doubt very much that they ever will. The legal argument arises that the sale of electric current is in a class by itself. Of course, electricity is a public utility, but no public utility clause exists in the United States Constitution. The states, in return for grants of franchises, priority of monopoly, may, under their powers, exercise the right to fix the selling price, but nothing in the Constitution or in the decisions of the Supreme Court gives the United States that power.

If there is one fact of which the average American seems sure it is that politically he governs himself.

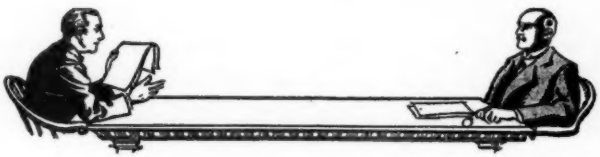
Because our government supposedly rests on "the consent of the governed" it remains one of the illusions of democracy that actually we do govern ourselves. In political theory we do, but in practice do we?

Is the American nation developing into the most over-governed and

the least self-governing of people?

Our cardinal political problem is how best to preserve sovereignties and at the same time maintain individual and collective rights and liberties. In politics it is easy to regard every period as one of transition or crisis, but there are significant omens which would make it appear that centralized government in the United States should be held to a minimum. In any forthcoming struggle along the lines indicated, between the power industry on one side and the politicians on the other side, it seems fairly certain that if the latter win the public also will pay, in inconvenience as well as in dollars.

Political thinkers since the days of Aristotle have adhered to the idea that "the government which governs least, governs best."



They Say that—

THE corporate purpose of a water utility in Pennsylvania, as stated in its charter, is "to promote Christian culture."

* *

CAB drivers who put too much air in their tires cheat themselves, because meters fail to register as much as 340 feet out of a mile when tires are overinflated.

* *

MANY regulatory commissions compel utility companies, as a safety precaution, to add an ingredient to their natural gas supply for the purpose of making it smell unpleasant.

* *

WHILE the number of private motor cars involved in accident fatalities from 1927 to 1930 inclusive increased 37 per cent, the number of busses, taxis, and trucks similarly involved decreased 19.3 per cent.

* *

THE village of Grand Marais, Michigan, is now connected with the outside world by a single telephone line, 26 miles long, built at a cost of $20,000. The one instrument in the town is located in the village hotel.

* *

Two pretty New York city school teachers recently insisted that the subway company there sell them a standard size 150-pound railroad tie, which they carted away themselves, refusing to say why they wanted it.

* *

DURING the year 1930 the commercial air transport companies in the United States carried 352,536 passengers over 24,673,913 miles; most of these passengers would have made the journey, prior to the development of the "new utilities of the air," by railroad train or motor bus.

"Going Value"

Why Make a Simple Computation Unduly Complicated?

HERE is a courageous attempt to eliminate a regulatory bugaboo of long standing by the process of logic and analysis tempered by legal precedent. The author states that the alleged difficulty of computing going concern value is largely a mental hazard; he claims it is simple enough if one understands what going value is and how to go about ascertaining it.

By THOMAS J. TINGLEY

No phase of utility valuation has been so subject to pure guesswork as the element known as "going value."

Just what *is* going value?

There is a familiar working definition to the effect that going value (or "going concern value" as it is sometimes called) is the difference between the mere physical value of a utility plant ready to operate and the same property actually in operation.

On one side, we have a brand new system costing so much to the penny and ready to do business, but without as yet a single customer. On the other, we have the same system with the same purely physical value, but already in operation with an appropriate number of customers attached and successful operation apparently assured. Subtract the difference and we have going value.

It sounds simple, does it not? Yet it remains the most muddled phase of valuation proceedings. Most utility experts seem to know what it is supposed to represent, but few appear to have any clear decisive method for measuring or computing it.

LET us start out by asking the following five questions:

1. What is going value?
2. Does it exist in rate cases?
3. Does it exist in the case of all utilities?
4. Must it be valued apart from physical property?
5. How should the amount of value be established?

In asking—and in attempting to answer—these questions, no claim is made that the problem is a difficult or involved one. It has been characterized as such, but improperly so. Fundamentally, the problem presented differs in no degree from that in-

volved in the valuation of physical property for rate purposes.

There is generally prevalent a feeling on the part, not only of the lay public, but of the bar as well, that the field of law with respect to the regulation of public utilities has been developed with but little reference to rhyme or reason, and by undue excursions into the realms of untrammeled fancy.

THAT regulatory bodies, in the course of their duties, and courts passing upon their decisions in review, have been called upon frequently to define the infinite and weigh the imponderable, is unquestionably true. For instance, in connection with this very routine task of ascertaining the fair value of the property of a utility for rate-making purposes, they meet, at the start of their efforts, the warning that if they proceed in the way any one would proceed in the determination of the economic worth of any other article of commerce, and apply the standard furnished by a willing buyer and seller, they will be fixing value on the basis of rates which are in turn fixed on the basis of value.

This is, of course, contrary to logic, and likewise to a well-defined public policy that apparently regards all circles as vicious *per se*. Accordingly, they have been driven to adopt the recourse of arriving at fair value by giving such weight as sound judgment dictates, in the light of the facts of the particular case, to such factors as the original cost of the property being valued, the cost of reproducing it new, less the depreciation accrued, as of the date of the inquest, and other factors, more or less relevant to value, which may be deemed pertinent, some of which are enumerated in Smyth *v.* Ames (1898) 169 U. S. 466. Granting the unavailability of the market value test, which gives predominant weight to the earning power of the property, these factors are as satisfactory as any that can be devised for forming the basis of a judgment as to value. The original and reproduction cost of an article of commerce would unquestionably influence the judgment, whether consciously or subconsciously, of a prospective purchaser.

CONCEDING, then, that the rate-making formula is not a wholly satisfactory one, its defects are nevertheless those that always attend the use of objective standards, and are not uncommon in our system of law. Whether or not a man injured by an automobile was guilty of contributory negligence, and whether the driver of the car used due care, are daily determined by twelve men on the basis of their conception of what the conduct of ordinary, prudent men would have been under the circumstances involved. Certainly this exercise of "hindsighted foresight" would seem a nebulous standard enough, but it has been applied with reasonably satisfactory results for generations.

Despite all that has been written or said about it, going value suffers chiefly from lack of adequate analysis. Text-book writers throw out a phrase about the difficulty of treating it, and then render the treatment simple by copying the *syllabi* of decided cases. Commissions meet it often by applying a fixed percentage to the value

found for physical property, and assume the correctness of the arbitrary result. It has been said that "the mental processes leading to the final determination of the sum to be allowed are nothing more than a whimsical adventure in an unblazed forest of speculation." *Re* Laporte Gas & Electric Co. (Ind. 1920).[1] There has been a vague realization that the term represents a genuine element of value, but little effort has been made to aid in the process of exact evaluation.

IT is necessary to the understanding of going value to trace the history of its gradual recognition by the courts and to analyze the methods by which the amount of value in any given case may be established.

In Knoxville *v.* Knoxville Water Co. (1909),[2] the Supreme Court assumed that "going value," as the term was employed by counsel, was "the added value of the plant as a whole over the sum of the values of its component parts, which is attached to it because it is in active and successful operation and earning a return." The court did not pass upon the propriety of the inclusion of this item in a case involving the confiscatory character of rates, but assumed it for the purpose of its discussion.

Substantially the same definition has been given by an authority in the field of utility operation, reflecting the effect of business analysis of the problem involved, Nathaniel T. Guernsey, vice president and general counsel of the American Telephone and Telegraph Company, as follows:

> "My conception of going value, or going concern value, in a public utility, is the element in the value of its property which represents the difference between the value of the mere bare bones of the property and the value of the property as it exists with an established business and a developed earning capacity, and also with a developed organization, including trained employees, and the efficient records and routines that characterize a going concern."

IT will be noted that these definitions assume successful operation and the earning of a return as conditions precedent to an award for going value. To a certain extent, these factors are dependent upon legislative and administrative caprice. The very rates attacked by a utility in a given case may preclude successful operation and the earning of a return by reason of the fact that they are unduly low. Thus another circle betrays dangerous tendencies. Perhaps a more apt definition might have been "the added value of the plant as a whole over the sum of the values of its component parts, which is attached to it because it is inactive operation, and capable of earning a return under fair rates."

This definition, variously worded, is the one actually employed at present by the majority of courts. It would deny an allowance for going value to a company unable to earn a return at fair rates. This would appear proper, as such a utility would certainly command a purchase price no higher than the fair present value of its physical property, if, indeed, it commanded one so high, in the absence of particular circumstances which would be subject to proof.

WE have, then, attained a definition and a limitation. Going value is an element of value attaching to the bare bones of a plant by reason of the fact that it is capable of being

[1] P.U.R.1920F, 586.
[2] 212 U. S. 1.

"Going Value" Suffers from Lack of Adequate Analysis

"TEXT-book writers throw out a phrase about the difficulty of treating it, and then render the treatment simple by copying the SYLLABI *of decided cases. Commissions meet it often by applying a fixed percentage to the value found for physical property, and assume the correctness of the arbitrary result. It has been said that 'the mental processes leading to the final determination of the sum to be allowed are nothing more than a whimsical adventure in an unblazed forest of speculation.'"*

successfully operated. A plant, let us say, originally cost $50,000. It would cost $75,000 to build it today. The fair value of the physical property may be $70,000, less accrued depreciation of $5,000, or $65,000. The plant is capable of productive use, hence it can command a price in the world's markets above junk value. But it is not being operated. It has no business. Obviously, the utility's property would not be worth as much to a prospective purchaser as if an organization had been developed and business attached. These things are done. The utility then claims the right to an allowance for this element of value for rate-making purposes. It can earn on the resultant value at fair rates.

We have also seen that going value exists only when the business is capable of successful operation under fair rates. Only under such circumstances could a price in excess of physical plant value be realized in the event of sale.

IN Omaha *v.* Omaha Water Co. (1910),[3] the Supreme Court held that the commercial value of a waterworks plant as a going concern was properly included in the valuation of the plant by a board of appraisers. In that case, the municipality had elected to exercise its option to purchase the plant and the ordinance exercising such option provided that nothing should be paid for the unexpired franchise of the waterworks company.

The court said:

> "The option to purchase excluded any value on account of unexpired franchise; but it did not limit the value to the bare bones of the plant, its physical properties, such as its lands, its machinery, its water pipes, or settling reservoirs, nor to what it would take to reproduce each of its physical features. The value, in equity and justice, must include whatever is contributed by the fact of the connection of the items making a complete and operating plant. The difference between a dead plant and a live one is a real value, and is independent of any franchise to go on, or any mere good will as between such a plant and its customers. That kind of good will, as suggested in Willcox *v.* Consolidated Gas

[3] 218 U. S. 180.

> Co. (1909)[4] is of little or no commercial value when the business is, as here, a natural monopoly, with which the customer must deal, whether he will or not. That there is a difference between even the cost of duplication, less depreciation, of the elements making up the water company plant, and the commercial value of the business as a going concern, is evident."

THE court distinguished the Knoxville Case on the ground that it involved the fixing of rates, and not public acquisition. This distinction can not be said to possess present significance. Rate and sale cases are on the same footing.

The decision is determinative of two questions which had occasioned considerable confusion. Many commissions consistently had confused going value with good will, or the likelihood that an established customer would return to the old stand. Inasmuch as the business under consideration was, at least to some extent, monopolistic in character, the inclusion of good will in the rate base was generally denied. Of course, gas is actually a competitor of electricity, and both, of other means of lighting; railroads, interurbans, and street car systems compete with the private automobile, and the telephone and telegraph systems fight each other and the radio for business, unless controlled under a common management. But with the propriety of the exclusion of good will we need not now concern ourselves. Certainly, the likelihood of the recurrence of a customer's patronage is not quite the same thing as the value that established business lends to an otherwise dead plant.

THE second matter determined presents more difficulties. A plant already constructed and in active operation would cost $100,000, after deduction of accrued depreciation, to rebuild. Many commissions argued that since the value of the plant, apart from its adaptability to the use for which it was intended, would be junk value, going value, or the element of value added by the attachment of business, was sufficiently allowed for if weight were given, in determining the fair value of the plant, to the factor of reproduction cost new less depreciation, without a further specific valuation for this item.

Thus, Commissioner Stevens, of the former New York commission, second district, said:

> "There is in this matter the assumption always implied and never stated, that the plant has a value equal to the construction cost, and this without any business attached; and that to this cost should be added the amount of deprivation of income or the amount of the expenditures made for business, or both. But the construction cost is not the exchange value of the property."

THIS theory, however, had been generally repudiated prior to the decision of the Supreme Court just referred to. In other words, in valuing the property of a utility, it is assumed that it is property being put to a productive use, but the increased value lent by the fact that a business has been attached is accorded separate and specific recognition.

For this to be done, it would appear to be imperative, as we have seen, that the utility be capable of earning a return at fair rates. If it can not do so, as Mr. Justice Stone pointed out in his dissenting opinion in the O'Fallon Case, the property is not worth its cost of reproduction; much less, a value fixed after consid-

[4] 212 U. S. 19.

eration of that factor, and increased by an allowance for established business. The earning of a return should not be made the test, for it may be the result of exorbitant rates, or the failure to earn it may result from rates fixed by the regulatory body at an unduly low level. The fairer test is the ability to earn a return at rates fair to both utility and public, as measured, for instance, by the rates in force on properties similarly situated, and resort to other objective standards.

Going value, then, exists not only in the case of public acquisition of private properties, but to the same extent where the use of the property is taken. It is not to be confused with the element of value in unregulated enterprises known as good will. It inheres in and is inseparable from the property, but is not sufficiently considered by giving weight to the reproduction cost new of the physical property. It must be separately and specifically considered.

IN Des Moines Gas Co. *v.* Des Moines (1915),[5] the Supreme Court sustained a finding of a master who apparently ruled that going value was sufficiently considered if the plant were valued at reproduction new levels, rather than scrap values, and allowance made for overheads incurred in the construction of the plant and the launching of the business.

[5] 238 U. S. 153.

Little importance need be attached to the decision, however, because such result, if it was actually reached, is inconsistent with the doctrine of the Omaha Water Company Case, and has been repudiated by subsequent decisions. It would appear possible that the court was misled by ambiguous language employed by the master, and thought that he had not only considered reproduction cost, but had added an element for going value.

A more likely interpretation of the language he used would be that he thought reproduction cost, as increased by other intangibles and overheads, in and of itself sufficiently reflected the value of established business. Costs connected with organization, such as legal and incorporation fees, are incurred in connection with the inception of any business, regardless of what may later prove to be its profitable or unprofitable character. They should not be confused with costs incurred in connection with the attachment of business. They are independent items.

The confusion between other intangibles and overheads and going value that characterizes this opinion renders it of little or no value for analytical purposes. Such overheads are incurred even if the plant stands idle from the date of its completion. They are connected with the organization and development of the plant, and not with the attachment of the

¶ "ORGANIZATION *costs, such as incorporation and legal fees, are incurred during the inception of the business, whether it later prove to be profitable or not, and should, therefore, not be confused with the cost of attaching business.*"

business. The decision is illustrative of the confusion that attended early attempts to define going value.

IN Denver *v.* Denver Union Water Co. (1918),[6] the Supreme Court held that in ascertaining the value of a water system for the purpose of determining whether the rates fixed by a municipal ordinance are inadequate and confiscatory, its value as a going concern is properly included. Something must be added to the mere physical inventory by reason of the fact that the plant is assembled and in successful operation.

This again disposed of the theory that reproduction cost of physical property reflected going value. It also treated rate and public purchase cases as being on the same footing with respect to the factor of going value. This treatment is now generally accepted. As Justice Clarke of the New York supreme court, appellate division, said in the Kings County Lighting Company Case (1913) 156 App. Div. 603:

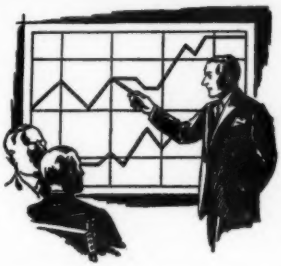
> "I am unable to perceive a logical difference between allowing 'going value' in the valuation of a plant when it is to be taken entirely by the public, and allowing the same element when valuing the same plant for rate-making purposes. In each case the thing to be done is the fair appraisement of present value. What difference in principle can there be because in one instance all is taken for the use of the public, and in the other the public limits the earnings?"

IN McCardle *v.* Indianapolis Water Co. (1926),[7] the Supreme Court held that the element of value in a developed water supply plant as compared with a plant not thus advanced is a property right and should be considered in determining the value of the property for rate-making purposes, and, further, that 9.5 per cent of the appraised value of the tangible property of a water company was not too much to allow for this purpose. Among the elements which the Supreme Court considered "impressive" in the commission's finding of the existence of going value in this particular property were the following: Earning power with low rates, business attached, fine public relations, credit, nature of the city served and certainty of future growth, the way the property was being planned and extended, efficiency and standard of maintenance, and desirability as compared with other properties.

SO far, we have only seen that the right to an allowance for going value in a rate case involving a utility business capable of successful operation is unquestioned. Let us now consider the question of how the quantity of the allowance should be proved. Indeed, as to this, there is little in the decisions except confusion and generalities. Resort must be had to basic principles, which fortunately, as we shall see, are well established, and are not difficult of application. One negative admonition is, however, contained in a decision that merits some consideration.

In Galveston Electric Co. *v.* Galveston (1922),[8] the Supreme Court of the United States, in an opinion by Mr. Justice Brandeis, held that going concern value was not to be included in the rate base of a utility property, for the purpose of determining whether a rate fixed by municipal

[6] 246 U. S. 178.
[7] 272 U. S. 400.
[8] 258 U. S. 388.



Three Facts and Three Fallacies Concerning Going Value:

GOING *value is* NOT *to be confused with the element of value in unregulated enterprises known as good will.*

GOING *value is* NOT *to be obtained by fixing a fixed and arbitrary percentage of the value of the physical property.*

GOING *value is* NOT *sufficiently considered by giving weight to the reproduction cost new of the physical property.*

GOING *value* SHOULD *be considered separately and specifically.*

GOING *value* SHOULD *be allowed only where the business is capable of successful operation.*

GOING *value* SHOULD *be measured by a consideration of the expenditures actually made for the purpose of attaching business as well as what it would cost to attach such business within a reasonable time if the plant were reproduced today.*

ordinance was confiscatory, where the only evidence as to costs incurred in the development of the business were studies, on various theories, of what past deficiencies in net income of the utility would aggregate, if 4 per cent were allowed as an annual depreciation allowance, and 8 per cent compound interest were charged annually on the value of the property used. The court said:

"If net deficits so estimated were made a factor in the rate base, recognition of 8 per cent as a fair return on the continuing investment would imply substantially a guaranty by the community that the investor will net on his investment ultimately a return of 8 per cent yearly, with interest compounded on deferred payments; provided only that the traffic will, in course of time, bear a rate high enough to produce that amount."

The court also stated that there was no evidence in the record to justify the master's finding that a business brought to successful operation "should have a going concern value at

least equal to one third of its physical properties." The master had argued that a prospective purchaser of the utility's system would be willing to pay more for it with a record of annual losses overcome, than he would if the losses had continued. As to this, the court said:

> "But would not the property be, at least, as valuable if the past had presented a record of continuous successes? And shall the base value be deemed less in law if there was no development cost, because success was instant and continuous? Or, if the success had been so great that, besides paying an annual return at the rate of 8 per cent, a large surplus had been accumulated, could the city insist that the base value be reduced by the amount of the surplus?"

THIS decision is the last that we will consider. It suggests the question as to the proper method to pursue in arriving at the *quantum* of going value allowance. It also forcefully illustrates the inherent fallacy of attempting to measure going value by failure to earn a fair return during the development period. The longer the duration of the period of inadequate return, the greater would be the going value. In other words, instead of providing an incentive to progressive management, the rule would place a premium on laziness.

IT will be recalled that the leading case of Smyth *v.* Ames (1898)[9] outlined a number of factors as possessing pertinence in the problem of arriving at fair value of the property of a public utility. One of these,—namely, par and market value of securities,—has come to be virtually obsolete as a factor of any consequence as a result of subsequent decisions. Original cost and reproductive cost new are the factors now accorded greatest, if not exclusive, weight, and in an era of high prices the courts unquestionably now require that predominant weight be accorded cost of reproduction new. This is manifestly correct, as the result sought is the value of the property, not when built, but as of the date of the inquest. Original cost is of significance only when it throws light on present value, and it can not do so when prices have advanced unless an index figure be applied representing the decreased purchasing power of the dollar. Regardless of what factor is entitled to dominance, what the property originally cost, and what it would cost to build it now are the factors considered in valuing physical property.

These are objective standards, and the best standards available, since that of market value is eliminated by the very purpose of the consideration. It would seem logical that the same considerations should be applied in proving the amount of going value to be allowed in any given case.

GOING value is the value of an attached business, profitable under fair rates, and can be measured by a consideration of what amounts were actually expended for the purpose of attaching business, and what it would be necessary to spend to attach such a business within a development period of reasonable duration if the plant were reproduced today.

Frequently, accurate cost data as to the cost of attachment of business are lacking. Such items are paid out of earnings and frequently no accurate record of the purpose of the expenditure is kept, during the early

[9] 169 U. S. 466, 546.

years of business history. Experience, however, will usually enable a skilled operator to gauge closely the cost of attaching additional customers to a system. This usually expresses itself in an estimate of so much per customer attached, and commissions frequently make their estimates for going value allowance on that basis.

MANY commissions have also given weight to the experience that would be encountered in reproducing the business in a comparable plant, including forbearance of adequate return during a reasonable development period. This is not to be confused with the claim for allowance of shortage of return actually incurred, which is an original cost study, as it involves the shortage that would be suffered by a plant built to reproduce the business under consideration. The method, however, involves consideration of too many speculative factors to be of great value other than possibly as a check upon the use of other methods. The difficulty as to the length of the development period and its consequent effect upon the amount of the allowance is overcome by assuming a period of reasonable duration.

PART of the cost of attaching business is the expense incurred in connection with building up an organization of skilled officers and trained employees capable of carrying on the operations of the utility, and accumulating an operating history that makes successful conduct of the business possible. The actual cost of this development, and estimates of what it would cost to reproduce such an organization new as of the hearing date, are both admissible in evidence as to this matter. A commission would, of course, be influenced strongly by the actual experience of the company with respect to such outlays, and would take notice of the fact that ventures of the character under discussion are not brought to the point of productive return in a day, but are usually built piecemeal, as public demand for service requires.

In connection with either the historical or reproduction cost methods, the result to be achieved is the production of a fair return, and no allowance for development of business should be capitalized after that has been produced.

IT will be seen, accordingly, that going value presents no more of an impenetrable maze than does any other factor connected with valuation. The problem in all cases is the same. A man makes a will. The question is, "Was he sane?" We cannot ask him, for he is dead, and if he were not, he would say "Yes." Resort must be had to objective standards—his daily business conduct as observed by those around him. The same is true of valuation, both of physical property and intangibles. And the same *criteria* are available and applicable.

Going value exists in the case of an established and successful business. The only problem is to determine its amount. Physical property exists, in the case of the same utility. The problem is to determine its value. This can and should be done, in each case, by proof of its cost and reproduction cost. The weight to be given to these differing factors is a matter of sound judgment.

The Utility Press Representative

As the Newspaper Editor Sees Him

THE author of this article is an experienced newspaperman who has served as managing editor of an important metropolitan daily. Out of his practical experience he has drawn the following pen picture of what a press relations man of a utility corporation should—and should not—be.

BY CURTIS HODGES

ONE of my first newspaper assignments when I was working for a city editor who was a capable czar was the covering of a bank failure. The source of information was the state bank examiner's office. (Yes, they had bank failures then the same as now.) When I turned in my "copy" on this story the city editor glanced through it scowlingly and then, coming over and perching himself on the corner of my desk, he snarled:

"You don't know anything about this story. You don't understand these things you have written. Now you listen to me; you go back and work on this until you understand it. When you come in here with a story I want you to know just as much about it as the man who gave it to you and a little bit more."

This sage advice can easily be applied to the press representative of a public utility.

THE press representative of a utility company is connected with what is commonly termed the "press relations department." That, in turn, usually is or should be a part of the "public relations department."

It is the business of the public relations department to see to it that such treatment is accorded to the public as to win confidence in the company. Assuming that the utility in all its activities is managed in a way to merit the approval of the public, then it is the business of the public relations department and the press relations department to make sure that the public is informed about what the utility company is doing. And one of the best ways to convey such information is through the newspapers. Therefore, the task of the press representative is important.

There are certain qualifications that it seems to me every press representative should have—particularly at

this time when the public utilities and the whole problem of commission regulation have been drawn into politics.

The first requirement I would set down for a press representative is that he understand fully the entire policy and management of the concern by which he is employed. Indeed, he should have a voice in making the policy.

I BELIEVE that the press representative should sit in on all important conferences and that he should not be afraid to express his views. It may be that the plans or policy, when finally completed, will not be in harmony with the opinion he has expressed; but if he is the right kind of press representative he will be in a position to adopt the policy as his own because he had a hand in making it. Certainly he will be well equipped for presenting the business of the utility to the public through the newspapers. By knowing all about the corporation he also will have taken a big step in winning the confidence and respect of the newspaper men with whom he deals—and that is of consequence.

WHEN the press representative steps into a newspaper office he should know just as much about the concern by which he is employed as anybody connected with it; if possible, a little more. A man in a position such as that will (if he knows the newspaper business) have little difficulty in presenting the case of his employer. He should be a man who has the ability to grasp the news value of his information and the judgment that enables him to make use of it.

A man of this character will not waste his time in writing a lot of stuff that never will get any farther than the newspaper waste basket.

THERE has been an unwise tendency sometimes to appraise a press relations man on the basis of the quantity instead of the quality of the press material that he can show for his efforts. Almost any clever writer can hammer out copy that will look good and possibly will sound well to his employer. But a public utility company employs a press representative to aid in the business of gaining the confidence of the community and it is the particular duty of the press man to merit and procure assistance from the newspapers in this task; also it is his duty to give assistance to the newspapers in understanding the policy of the utility and of its problems.

There might be considerable periods of time—days or even weeks—when the press representative might not write a line of copy, yet still earn his salt. This failure to provide copy should not necessarily be held against him; he has many other duties that are just as important as presenting copy to a newspaper, although they may not bear such an outward semblance to work as hammering a typewriter does. The press representative should be in the position of the watchman on the boat who has his weather eye cast for storms on the horizon.

NOT infrequently a case arises in which a press representative may earn his salary for an entire year if he can get one paragraph into or

keep one expression out of a newspaper article. And the only way he will ever get it eliminated is to be close enough to the newspaper to know that the objectionable expression is scheduled to be published and to have sufficient ability to convince the editor that it should come out.

I once knew of a school board that aroused the criticism of the press by putting up a lot of new school buildings, well equipped with gymnasia, showers, rest rooms, and the other products of modern architecture. It seemed an extravagant procedure to the newspapers and they were not hesitant about saying so. The school board defended itself by saying that the buildings were substantial and that the school pupils of the city were entitled to such conveniences as were being provided. The school board's stuff was getting over very well with the public until one day, in a hearing on the question of a tax levy, one member of the board, while commenting on how expensive it was to construct modern buildings, said that in some instances it was necessary to "gild the rivets that went into certain parts of the building."

That phrase spilled the beans. A smart newspaper reporter was there and he immediately coined the expression the "gilded rivet school board." This sounded good to a head-line writer so it went into an eight-column streamer. And the four words "gilded rivet school board," used day after day, proved far more harmful to the school board than all the other columns of stuff written.

JUST as damaging and seemingly as unimportant incidents can come up in connection with utilities. The press representative must be quick to perceive events; he must act quickly and he must know how to act. It is usually the three-line item that causes the libel suit for the newspaper, and it is the apparently unimportant thing that may cause most trouble for the public utility.

I was present once when the directing editor of a great newspaper was employing a man whose business it was to be to handle all public utility stories that went into the paper. He said to the applicant:

"Remember, I shall not feel that you are idle if I see you with your feet up on a desk reading. Or even if you are not reading I shall not feel that you are idle. But when any question comes up in connection with a public utility I shall expect you to know all about it and to be able to

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handle the stories intelligently and forcefully. That is all I ask."

Such instructions would not be bad for the press representative of a public utility. His ability then would not be measured by the volume of "copy" he could prepare for the newspapers.

THE press representative should not permit any "widow's pig" to get into the garden of his employer. The term may seem irrelevant, but I knew a man who lost an important public appointment because a newspaper reporter said he was being called a "widow's pig." The reporter went on to explain that the "widow's pig" is the pig that goes around the neighborhood, drinking out of people's swill buckets, but always grunting and complaining as though it did not have enough to eat. So, he said, it was with this man who had already held a number of profitable public places and was now seeking another. The man to whom the sobriquet was applied became angry and the reporter had to write a retraction of some kind. But the devil's work had been done.

A press representative should know all about the business of his employer and should not be appraised on the basis of the volume of copy he turns out. Also, the press representative should know the newspaper business as well as the manager of the newspaper knows it.

Not long ago a news press association man, writing for PUBLIC UTILITIES FORTNIGHTLY, said that a clever reporter is not necessarily an efficient press representative. He said the press representative should know much more about the newspaper business than merely the reporter's end of it. When I read this I wanted to give three cheers; in my opinion never were truer words written. And I would like to enlarge on this writer's point.

LET'S take a trained newspaper man who has been made the press representative of a public utility. He has learned how to gather and write news and he knows what is done with it when it gets into the office. He has been a reporter, a city editor, and possibly a managing editor. He knows about editing and headlines and deadlines and stuff that is "left over on the stone." Also he has a pretty fair idea of just what the public reaction will be under given conditions.

Now this seasoned trained newspaper man, in the course of his work, finds that a change is being made in one of the departments of the utility company—a new man is being put in and another man is being promoted. The newspaper man knows at once just how much news there is in this development; he can picture immediately how much space the story will get; the kind of headline it probably will have, and about what position it will have in the paper. So he will turn in a story that will fit the requirements. He may prepare a story of three hundred words for the newspaper and deliver the story to the city editor with a photograph of the subject, accompanied with the request that a one-column cut be published. All of this will strike the city editor as being reasonable, so the story will be pushed along, will "make" the paper, and everybody will be happy.

It Is the Press Representative's Job to Know Both the Utility and the Newspaper Business

"THE press representative should know the newspaper business as well as the manager of the newspaper knows it. . . . The wise press representative will constitute himself a member of the newspaper's staff as well as the utility's staff; it is his business to help the newspaper and by helping the newspaper thus help his employer."

How much better this method is than to write one thousand words, irritate the city editor and the "copy desk," have the story slashed hurriedly as an incident in the day's routine of the newspaper, and have it appear in the paper in a disconnected and fragmentary style—and then to have to go to the boss and explain what a nice story was written but the dumbbell newspaper wouldn't publish much of it! In handling the newspaper in a proper way, the press representative will be in much better position to ask a favor when one is badly needed. The wise press representative will constitute himself a member of the newspaper's staff as well as the utility's staff; it is his business to help the newspaper and by helping the newspaper thus help his employer.

I WAS sitting at my desk one day when the press representative of a utility ambled in with a story. It was about one o'clock in the afternoon, which is a very busy time on an afternoon newspaper. As I recall it, a rather bad fire was going in the south part of the city and reports of its progress were coming in by telephone. On my left sat a gentleman whom for convenience we may call Wilbert T. Gazooks. He was there to explain that he was not the Wilbert T. Gazooks who had been referred to in our paper as being an *habitue* of a gambling house; that he was being placed in an unfair light in the eyes of his neighbor. In addition to Mr. Gazooks and the fire there were the other stories from various "runs" falling on my desk—dashed on my desk I might say. Everybody knows how the reporter slaps his story down on the city editor's desk as much as to say: "Now I am going out to a one arm and get something to eat. You worry with it from now on. You get more money than I do."

Into the midst of this scene the press representative of a utility came. He announced that his company had adopted plans for improvements that would cost a half million dollars and he asked if he could get something in the paper about it. My reply was:

"Hell yes, of course you can get something in the paper about it! That's what we are doing here—publishing news. We are not paid to suppress it, you know."

The story got in the paper all right on page one but it had to be cut one half, due to lack of space, and it took a smaller headline than it would have got if it had been brought in early in the morning, before we knew about the fire. The press representative should have known that this was a first page No. 1 head story "with art." He should have known we would be very glad to get the story. And he should have engineered it in his office so that we would have had a chance the day before to get pictures of the place where the improvement was to be made. He would have had a much better standing in the newspaper office and he would have got better results.

This man was a capable writer and he had written an excellent story but evidently his previous duties had never taken him to the composing room in that hectic last half hour when the linotype machines are overloaded; the news editor is trying to get seven columns of copy in three columns of space and the foreman is yelling that pages must be closed.

IT is always easy to handle the press relations of a utility that is tuned from top to bottom for service to the public.

I have in mind, for example, a utility manager in a western city of one hundred thousand. One day a young and ambitious lawyer from that city came into my office. He was alert to find an issue that would advance him politically.

"I came over," he remarked, "to watch the proceedings before the public service commission, in which our water company is trying to get the right to issue $200,000 in bonds."

"Did you speak against the proposal?" I ventured.

"No," he replied sadly. "There is no use to speak anything against what the manager of that water company wants. You know, fifty citizens were over here to help him get what he wanted. He knows every man, woman, and child in the town, and on mornings when they come in to pay their water bills he is always out in front and shaking hands and asking Mrs. Jones how her daughter who is in college is getting along and inquiring of old Mr. Smith about the latter's grandchildren. No, you couldn't do anything against that man."

Undoubtedly that particular utility man did not need a press representative. But, of course, that was a small city and he was an unusual man.

IS there much effort to coerce newspapers by threatening to withhold advertising?

I asked a man of long experience in the regulation of the utility industry about this and he is in a position to know. He seemed surprised at the suggestion; he said that he did not believe there were attempts at coercion and that such practice would be very unwise.

I believe he is right. I have seen some very extensive utility advertising campaigns in newspapers that were unfriendly. The influence of a newspaper that could be coerced in that way would not be worth having. I must, in fairness say, however, that I have known of one outstanding case in which a utility openly did everything possible to divert

advertising from a certain newspaper. But the effort got nowhere except to stimulate the efforts of the advertising department of the newspaper. It seemed to me that some personal elements entered into the fight.

Any attempt to coerce a newspaper by the advertising route would make things pretty tough for the press relations man. Except for the one case I have just mentioned I do not believe that I have ever known of such attempts. On the other hand, I have seen the advertising departments of unfriendly newspapers frequently patronized generously by the public utilities.

To sum up: The press relations man should know all about the policy of the utility company and should help make it; he should be valued for the results he gets and not for the volume of copy he writes—and he should know the newspaper business as well as a man who runs a newspaper.

If Reports Are To Be Believed—

A SINGLE street car will carry as many seated passengers as 35 private motor cars.

* *

THE first county hydroelectric plant in the United States was built in Crisp county, Georgia.

* *

THE present administration at Washington has doubled the number of telephone calls to and from the White House.

* *

LAST year—1930—the taxicabs in this country carried more than a billion passengers, while the railroads carried only 786,000,000.

* *

THE largest private telephone exchange in the world is located in the Pennsylvania Hotel in New York; it employs seventy people.

* *

THE tallest electrically lighted building in the world is the Empire State Building in New York city; it is 85 stories high, and stands 1,248 feet above the sidewalk.

* *

THE General Post Office in London is the first governmental institution in the world to build an exchange for use in transmitting messages by the unique telephone-typewriter.

* *

FOR three nights the 760 residents of Bow, New Hampshire, groped their ways in darkness about the town, after they had voted to abandon the electric street lamps as a matter of economy. The lights were then voted back.

* *

AN all-powerful traffic-control bureau, that will regulate all transportation facilities, including the railways, trams, airplanes, and motor vehicles, will be set up in England before 1955—according to Herbert Morrison, Minister of Transport.

* *

THE Baltimore & Ohio Railroad made history recently when the directors voted to reduce dividends from 7 to 5 per cent, and advanced, as one unique reason, the desirability "of keeping the forces of the company employed as fully as possible."

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

JOHN SPARGO
Writer and economist.

"More money has been lost in farm mortgages than in utility securities."

DR. PAUL SCHROEDER
State criminologist of Illinois.

"It is the ego-eccentric man, rather than the man of low intelligence, who is unfit to drive an automobile."

GUS W. DYER
Editor, "Southern Agriculturist," Nashville, Tenn.

"I doubt if you can find any man in the United States, eminently successful in business, who will indorse government ownership."

From the clip sheet of the Oregon Utility Information Bureau.

"There is no such thing as a power trust. It has no address; no letter-head; no offices; no stockholders. It is only an idea like Santa Claus."

IVAN BOWEN
General Counsel, Greyhound Lines.

"The railroads will realize that the development of the motor industry and highways has been one of the largest contributors to their prosperity."

DONALD RICHBERG
Attorney at law.

"The operation of a public business is a public trust, and the making of private fortunes out of the operation of a public business is a breach of public trust."

J. F. DEASEY
Vice President, Pennsylvania Railroad.

"In the interest of motor bus transportation and the public, and without regard to railroads, interstate bus carriers should be made subject to Federal regulation."

JOHN DEWEY
Former Professor of Philosophy.

"Our land system, our mines, our forests, and now our water power have, when politics has touched them, fallen under control of ownership by the 'producer.'"

CLINTON CAMERON
Editor and author.

"Practically every competent public official, had he chosen personal advancement and private business, could be earning at least twice the salary he now receives in his governmental capacity."

BAINBRIDGE COLBY
Former U. S. Secretary of State.

"I sometimes wonder who is representing America at the seats of government. I can identify the spokesman for the railroads, and for the utilities, the textile manufacturers, and the various importing interests."

GUIDO H. MARX
Magazine writer.

"There is no other field of public interest in which there is so complete, effective, and continuously operating machinery for the dissemination of misinformation and silencing of opposition as in the domain of the public utilities."

MATTHEW S. SLOAN
President, the New York Edison System.

"The best government utility operation I know of, the Ontario Hydro Electric Commission and its associated municipalities, does not do as good a job as the nearest comparable utility group in the United States, just across the Niagara frontier."

PAUL S. CLAPP
Managing Director, National Electric Light Association.

"To say that the National Electric Light Association is 'the power trust' is just as sensible as to say that the National Grange is 'the farm trust' or the American Bar Association is the 'law trust' or the American Medical Association is the 'medicine trust.'"

W. H. GRIMES
Washington correspondent of the "Wall Street Journal."

"The Progressives, of course, are exaggerating their case against regulation and they know they are exaggerating it. Their real complaint is not against the regulators but against the regulatory formulas which have been laid down in statute and interpreted by the courts. They happen to be up against the constitutional prohibition against confiscation of property and they seek a way around it."

CHARLES T. RUSSELL
General counsel, N. Y. Telephone Co. (in commentary upon nine bills for utility regulation, backed by Governor Roosevelt).

"The provisions of the bills are such, that if they were enacted, no one would put a nickel into utility stocks. They violate the established law of the land as to fair return and exceed the state's power as to right of ownership. Their purpose is really to strangle and ruin the properties and then have the state take them over. The utilities could not accept them and live. The bills are just disguised attempts to reach public ownership."

DR. JOHN BAUER
Utility rate expert (in commentary upon the same nine bills).

"These bills constitute no proposition to unseat private companies. But unless regulation is revised along these lines in this and other states, the very failure or regulation will be the greatest force in bringing about public ownership and operation. This is no insidious attempt, it just expresses a desire to create a yardstick for regulation of rates."

An Open Letter to All State Utility Commissioners

THE Congress has adjourned and unless the President calls an extra session it will not reconvene until the first of December. All legislation that the state commissions were especially interested in and which either directly or indirectly affected state regulation was left unfinished and none passed, so we are again marking time on such vital legislation as the Parker-Couzens Bill, looking to the interstate regulation of motor traffic, the Couzens Bill No. 6, known as the Communications Bill, and other kindred legislation which threatens the rights of the sovereign states in regulatory matters, both interstate and intrastate.

This leaves the state commissions after years of hard work, expense, and uncertainty, practically in the same situation they were when this invasion of states' rights was begun by attempted congressional enactments to federalize and centralize all regulation in Washington by some Federal agency.

The members of the National Association of Railroad and Utilities Commissioners can at least take pride in the fact that they have been factors, with their friends in Congress, in preventing the usurpation of state rights and the establishment of a Federal centralized oligarchy in Washington.

BUT THE FIGHT IS NOT WON. It has only been checked in its insidious attempt to destroy the rights of the states and their agencies in matters of regulation. Between this time and the opening of Congress in December they will leave no stone unturned to entrench their forces and recruit new and powerful allies in their attempt to minimize state authority and make helpless and impotent state commissions.

In the meantime, and especially on account of the national financial depression and the unrest in the country, they hope that the people by reason of their present troubles may forget the great fundamental principles upon which our Republic is founded and which is the very soul of its organic law. Therefore, I, as the president of your National Association, feel that it is my duty to urge each state commission in this Union to renewed activity, to gird up your loins, and begin an active campaign in defense of your sovereign state as to its rights over all regulatory matters for which our commissions were created.

I would respectfully urge that you bring these all-important questions to the attention of your governor, your legislature, to your members in Congress, to the press of your state, that it may reach the greatest of all tribunals in a free country, the people of the United States.

Harvey H. Hannah

PRESIDENT, NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS

OREGON'S UNIQUE EXPERIMENT WITH

A One-Man Utility Commission

The significance—and the constitutionality—of the recent action of the state legislature in enacting a law that has stripped the regulatory body of its *quasi* judicial functions established it frankly as a People's Advocate, and permitted each town to regulate its own utility rates as it chooses.

By OSWALD WEST
FORMERLY GOVERNOR AND FORMER RAILROAD COMMISSIONER OF OREGON

OREGON'S first railroad commission was created along in the latter part of the eighties. It was without power to fix rates or regulate service. It served as an advisory body only and, like all similar commissions, failed in its purpose. The people soon came to look upon it as a sort of vermiform appendix of the railroads and the legislature was not long in wiping it out of existence.

Along about 1900, however, the lumbering industry of the Northwest began to suffer severely through car shortage, and shippers in general began to cry out against unreasonable rates and practices of the carriers. Organizations were created for the purpose of securing relief. Able men took up the fight, with the result that a new and effective Railroad Commission Act was passed by the legislature of 1907.

The Oregon act followed closely the Wisconsin law and provided for the appointment of three commissioners whose successors were to be chosen by the people. The new commission, having ample authority under the law, was prompt to bring relief to the shippers and its work was applauded by the public.

THE legislature of 1911 decided that the law should be extended to all public utlities, and as a result our present public service commission law was enacted. Like the Railroad Commission Act, it followed closely the Wisconsin public utility law and

retained the three commissioners. Before taking effect, however, the proposed law was subjected to the referendum and submitted to the voters at the general election in November, 1912. Meeting with popular approval, it became a law. It has since been extended to cover truck and bus lines thus greatly increasing the work of the commission.

UNDER the existing laws the commission has been able to give the public every reasonable protection. It has, from time to time, brought about reductions in local rates and met with no little success in cases affecting interstate rates which it presented to the Interstate Commerce Commission. Its efforts towards securing a betterment of the service afforded the public has always been fruitful.

Largely because the commissioners, serving during late years, were never spectacular in their activities and lacked somewhat that "sense of news" which would have enabled them reasonably to exploit their work and satisfy the public, they became the objects of attack by designing politicians who kept the fires burning until the people—the unthinking people—began to believe that these officials, who were all honest and earnest men, were in league with the railroads and utilities and actually doing their bidding.

Such was the situation when the 1930 campaign for governor arrived.

GEORGE Joseph, one of the Republican candidates for governor, centered his attack on the public service commission—demanding its abolishment. He also charged that our vast hydro-power possibilities were practically all lost through the activities of the "Power Trust." How foolish was this charge is disclosed by the records which show that of the state's 6,000,000 potential horsepower only 5 per cent is under the control of private concerns.

Joseph won out in the primaries but he dropped dead a few days later. The Republican state central committee was called upon to name his successor and did. The committee's action, however, was not pleasing to the followers of Joseph who called a mass meeting and nominated his friend, Julius Meier, as an Independent. In the election the vote was fairly well divided between the Republican, Democratic, and Independent candidates—with the latter winning.

UPON taking office, Governor Meier found at hand a legislature ready and willing to do his bidding. He presented a hydro-power program which neither he nor any of his supporters understood, yet the legislature took it and passed it "as is" or "as was."

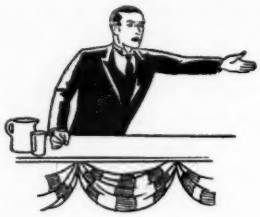
His Excellency found that after all it would be unwise to abolish the public service commission but, as he had to make at least a gesture towards its abolishment, he presented a bill which:

(1) Reduced the number of commissioners from three to one;

(2) Made that official a sort of public prosecutor;

(3) Gave (or at least attempted to give) him power to make orders affecting the utilities without granting them a hearing, and:

(4) Granted home rule to cities.



"It was contended . . . that the utility commission in Oregon should no longer be permitted to sit as a judicial body; that it should be empowered and directed to represent the complainants in matters before it. Because of the state of the public mind it was useless to argue that only by acting as a judicial, or QUASI *judicial, body could it meet the constitutional requirements of 'due process of law.' The people would have none of it. They demanded action—prompt action and plenty of it."*

This measure was promptly approved by the legislative body.

THOSE who drafted the bill for the governor knew little about public utility law. If they ever knew anything of the fifty years of earnest effort on the part of able men to secure the adoption of state and Federal regulatory laws which would stand the test of the courts, they made it a point to forget it. If they ever read or heard that the Fifth and Fourteenth Amendments to the Federal Constitution extended their protecting hands to the railroads and utilities, as well as to the farmer and city home owner, they completely ignored the fact.

Ignorant, or regardless, of the fact that the Supreme Court of the United States (Washington ex rel. Oregon R. & Nav. Co. *v.* Fairchild (1912) 224 U. S. 510), has said:

> "The carrier must have the right to secure and present evidence (before the commission) material to the issue under investigation. It must be given the opportunity by proof and argument to controvert the claim asserted against it before a tribunal bound not only to listen, but to give legal effect to what has been established,"

the drafters of the governor's bill added to the provision in the old law, setting up the machinery for due notice and hearing, the following *proviso,* which will no doubt appeal strongly to any one familiar with constitutional law:

> "Provided, that the commissioner may, in his discretion, after he has made any such (summary) investigation on his (own) motion, *but without notice or hearing as above specified,* make such findings and orders as he deems justified or required by the results of any such investigation, which findings and orders shall have the same legal force and effect as any other finding or order of the commissioner."

TO further strengthen the hands of the commissioner (and the public), he is, under the act, to be

stripped of his *quasi* judicial robes and made an inquisitator. He must no longer "listen" but must "look." When he finds a place to soak the utilities he is to land on them with both feet and without notice or warning.

Here it is:

"In addition to the powers and duties now or hereafter transferred to, or vested in, the commissioner, it shall be his duty to represent the patrons, users of the service, and consumers of the product, of any public utility, and the public generally in all controversies respecting rates, charges, valuations, service, and all matters of which he has jurisdiction, and in respect thereof, it shall be his duty to make use of the jurisdiction and powers of his office to protect said patrons, users and consumers, and the public generally, from unjust and unreasonable exactions and practices, and to obtain for them adequate service at fair and reasonable rates."

As the city of Portland was insisting on home rule in the matter of regulation of the rates and service of the utilities, every city and town in the state were given the right:

"To fix by contract, prescribe by ordinance, or in any other lawful manner, the rates, charges, or tolls to be paid to, or that may be collected by any public utility, furnishing any product or service within such town or city.

"No such schedule of rates, charges, or tolls, fixed in the manner herein, shall be so fixed for a longer period than five years. Whenever it is proposed by any city or town to enter into any contract, or to enact any ordinance, or other municipal law or regulation concerning the matters specified in this subdivision (3), a copy of such proposed contract, ordinance, or other municipal law or resolution, as the case may be, shall be filed with the commissioner of public utilities before the same may be lawfully signed or enacted, as the case may be, and the commissioner shall thereafter have ninety days within which to examine into the terms thereof. If the commissioner is of the opinion that in any respect the provisions of the proposed contract, ordinance, or other municipal law or resolution, are not in the public interest, it shall be his duty to file, in writing, with the clerk or other officer who has the custody of the files and records of said city or town, his reasons therefor.

"If such objections are filed within said period of ninety days, no such proposed contract, ordinance, or other municipal law or regulation shall be valid or go into effect until the same shall have been submitted to or ratified by the vote of the qualified electors of said city or town. Unless and until a city or town shall exercise its powers herein conferred and as herein provided, the commissioner of public utilities shall be vested with all the powers with respect to the matter specified in this subdivision (3).

"If a schedule of rates, charges, and tolls, as aforesaid, shall be fixed by contract, ordinance, or other municipal law or regulation, and in the manner herein provided, the commissioner shall have no power or jurisdiction to interfere with, modify, or change the same during the period fixed by such contract, ordinance, or other municipal law or regulation. Upon the expiration of said period, the aforesaid powers shall again be vested in the commissioner, to be exercised by him unless and until a new schedule of rates for such service or product is fixed or prescribed by contract, ordinance, or other municipal law or regulation."

Under the Oregon Constitution the cities and towns of the state have "home rule." The people make and amend their own municipal charters. While, in some things, they are subject to the general laws of the state, it will be interesting to learn how far the legislature can go in suspending a city ordinance until approved by some state official. It will also be interesting to watch the cities and towns fix rates by ordinance and without "due process of law."

It may be asked why a measure, so open to attack on constitutional grounds, was proposed by the administration?

The answer is—politics and ignorance.

The governor, in his campaign, was prompt to capitalize the accumulated dissatisfaction over certain findings and orders of the old commission—findings and orders made in

good faith and supported by the law and the facts in the particular cases. It was contended, and His Excellency took up the cry, that the utility commission in Oregon should no longer be permitted to sit as a judicial body; that it should be empowered and directed to represent the complainants in matters before it.

Because of the state of the public mind it was useless to argue that only by acting as a judicial, or *quasi* judicial, body could it meet the constitutional requirements of "due process of law." The people would have none of it. They demanded action—prompt action and plenty of it.

When about to take office, His Excellency secured the services of an attorney of standing to draft the bill reorganizing the public service commission. The matter was not, however, left to the judgment of this attorney who had considerable knowledge of constitutional law. He was given instructions as to what was wanted and directed to draft the measure accordingly. When he explained the results of his works before the legislative committee, he was careful to state that it did not represent his views in the matter but the views of others. He made it plain that the bill undoubtedly carried provisions which would become open to attack on constitutional grounds but, since they represented the views of those for whom the act had been prepared, the responsibility did not rest with him.

The bill as presented passed both houses and was approved by the governor.

THIS bill, coupled with certain water power measures which completed the governor's program, was given the right of way. Practically all introduction of bills was suspended until after the appearance of His Excellency's pet measures. As a result, three weeks of the session were all but wasted. Immediately after the governor's bills appeared, the flood gates were opened and around 835 measures were dumped into the legislative hopper—about 450 of which were passed by both houses and all but a few received gubernatorial approval.

The member of the House who introduced the governor's public service bill never knew what it was all about—nor did three fourths of the members of the committee to which the measure was referred. Those who attempted to point out the defects in the bill found themselves just as much out of place as the bartender who tried to deliver an address before a W. C. T. U. convention.

The new commissioner, having little or no knowledge of public utility law, found himself free to enter into the spirit of the new act. He was prompt to declare that hereafter the people would have a champion on the job and that their rights would be fully protected.

The situation holds promise of a good show. We are going to learn something new about constitutional law.

Perhaps the governor and his commissioner have a new set of books to spring on us. Anyhow we are waiting.

Ex-Governor WEST *will describe Oregon's legislative deadlock on the plans for developing the state's water power—in a coming issue of this magazine.*

As Seen from the Side-lines

LOCAL public sentiment is the rule to which the average statesman measures his political gyrations. The statesman who can measure it to a nicety is the most accomplished politician just as the accurate carpenter is the most sought artisan.

* *

MR. Borah of Idaho is unexcelled in the use of the square and compass by which the public emotion is estimated, unless it be by Mr. Walsh of Massachusetts, who is more skilled in this technique than his gracious appearance would indicate to the casual observer.

* *

BORAH likes a contest, if it is to be a winning one. He has an intuitive, instinctive judgment. His terrific, unyielding campaign against the League of Nations is a trite illustration. He foresaw what American public opinion would be when other able but undiscriminating gentlemen were permitting themselves to be intrigued by that alleged panacea of all international ills and he hewed to the line of opposition when the early hewing seemed to be fruitless if not damaging to his own political prospects. If he seems at times to run away from a fight, it is because he knows it will run a long, long trail to utter defeat and harmful political consequences.

* *

NORRIS, unlike Borah, will continue to plug away, regardless of the outcome. Coolidge had some of Norris' philosophy. Current history is evanescent and unsettled, he believed. Time alone will tell. The elder LaFollette possessed courage like Norris and some of Coolidge's fatalistic political philosophy. He had the courage of conviction.

* *

THIS thing called public sentiment is as formidable as the statesmen admit it to be. Yet it is juster and sounder than they privately concede it to be. The average man wants to be just; he wants justice, especially when it revolves upon an abstruse political problem which does not intimately and vitally affect his income or daily life. He needs only a few facts. Where statesmen become enmeshed in the details, like a spring plant clutched by the weeds and vines, Mr. Average Voter acts upon a few basic facts. His judgment is instinctive and intuitive.

* *

MR. Wilson believed that Shantung was only a detail. He granted it to Japan in order to secure Japan's vote for the great principle—the League. Yet I have seen a great audience arise to its feet and cheer an United States Senator who declared he would vote against any and all Leagues which purposed "to deliver 90,000,000 people of Shantung to their ancient foe." The people caught the antidemocratic principle where the brain of Wilson had fancied it to be but a detail.

* *

IT is sentiment, I believe, the strong sentiment of local self-pride, which will stand out most strongly against the comprehensive plan of railroad consolidation now being shaped into its final form for submission to the Interstate Commerce Commission.

* *

SENTIMENT, in this case, will be motivated by local self-interest, by community jealousies stimulated by community rivalries.

* *

THIS railroad consolidation affects the most populous areas of the United States as well as the richest industrial, commercial, and financial marts. Despite the march of the auto, the development of the motor bus and the airplane for transportation, and despite

the steady development of the inland waterways, the people have it in their heads that the railroads are the backbone of the transportation body and will continue to be for many generations of the future.

* *

THE local shipper wants his goods to be moved as expeditiously and as cheaply as the fellow's in the next county or state. He wants improved service no matter how it wallops the railroad's treasury. The traveler would have a special train run for his personal convenience, if he were the only traveler in it. The local politician, whether he represents the community as Senator, Congressman, mayor, or selectman, will strive for every advantage which can accrue or be collected for that community so long as he holds the public office.

* *

IN short, the railroad consolidation has all the vital, intimate, and personal aspects that can influence the average man to gauge it by his pocketbook, his convenience, his comfort, or by his immediate civic pride. His natural, inherent sense of justice possibly will become obscured. He, and his neighbor, will be out to get something for himself while the getting is good.

* *

THAT state of mind already exists in the northeastern reaches of this country where the Pennsylvania and the VanSweringens are contesting for merely a supplemental advantage of railroad consolidation—for control of New England transportation.

* *

THERE are some, like the governor of Massachusetts, who put the contest on a high plane. They want the commonwealths to be the masters of their own destiny, to determine which trunk lines may enter and upon terms dictated by the territory to be penetrated. But, by and large, each community and each citizen will finally judge the issue by its probable or likely effect upon it and upon himself.

THE New England situation will be magnified a thousandfold by the vast plan of consolidation, affecting, as it does, the richest transportation area in the United States and probably in the world. A thousand conflicts and a thousand varied interests (it is quite the fad to write in statistical terms since Mr. Hoover became President) will have to be separated and will have to be compromised and adjusted.

* *

OUT of it all will come, I believe, a conclusive test of the rights of the states in the matter of transportation regulation. Beginning with the war, too many of the public utility commissions yielded their power to the National Government, and relatively few of them have begun to reassert and demand the power logically invested in them by the democratic principle of state's rights. They have sat back comfortably in their cushioned seats and granted without contest the alleged infallibility of the premise that the National Government has supreme power.

* *

THE premise may be true and accurate. But what about the detail of it? The mere statement that a railroad is operating interstate, that a rate or a schedule is interstate, does not make it so. Like Mr. Wilson in the Shantung matter, the public utility commissioners have conceded upon "details" which were actually the basic element of the problem.

* *

THESE commissioners will have to satisfy active, self-motivated public sentiment in this powerful matter of vast railroad consolidation. It affords them a fine chance to gather some of these "details" to themselves again and to seek the recovery of duties and of rights which have been wrested from them without complaint. If they possess some of Mr. Borah's or Mr. Walsh's political perspicacity, they will take hold of this issue.

John T. Lambert

What Others Think

A Disagreement Among the Doctors in Prescribing Remedies for Regulation

For six years Dr. William E. Mosher has been director of the School of Citizenship and Public Affairs at Syracuse University; prior to that he held a series of positions in connection with such organizations as the New York Bureau of Municipal Research, the U. S. Department of Labor, and various New York legislative commissions.

During that time and with that much general experience with governmental administration, one would imagine that Professor Mosher would have long ago come to have a fixed opinion as to what utility regulation amounts to and what can be done about it. But he has not. Dr. Mosher does not have the type of mind that stands still.

One might have judged from his utterances of five years ago that Dr. Mosher was a relentless critic of utility companies and their parents, and particularly cynical concerning the success of commission regulation. One might reasonably gather from a book edited by Dr. Mosher in 1928, entitled "The Crisis," that he favored government ownership as the only solution to our regulatory problems. More recent utterances seem to make the author appear as a drastic but honestly constructive regulatory surgeon, who would save regulation from death and destruction by cutting away defective parts of existing regulatory legislation and by building up the power of the commissions with increased jurisdiction.

But Dr. Mosher is not changing; he is simply following the same line of reasoning to its logical conclusion. By a process of elimination he has finally brought his objections to regulation down to two main trouble centers—valuation (which he says "has been pretty well tied up by the decisions of the United States Supreme Court"); and the holding company.

Compare this position with the attitude taken by two other acknowledged professorial authorities who are so articulate about the failure of regulation, Dr. Felix Frankfurter, of Harvard Law School, and Dr. John H. Gray, of the economics department of American University. Because of certain Supreme Court decisions, says the former, "the so-called rules set the regulatory agencies an impossible task." Dr. Gray says, "There can be no effective regulation so long as valuation by any method is its basis."

Dr. Mosher seems more hopeful. To be sure, he seems to deplore the mess that the Supreme Court made of utility valuation as much as the others. Yet, he appears to regard commission regulation pretty much the same as Lord Macaulay regarded Christianity—hardly a failure since it has never really been tried.

In a recent issue of *State Government*, Dr. Mosher gives an interesting table (reproduced here) which shows the extent to which the states are now regulating the different types of utilities.

The author next pleads for more progress in the standardization of utility regulation. He concedes that much has been accomplished along this line by the National Association of Railroad and Utilities Commissioners, the National Conference of Commissions on Uniform State Laws, and the American Bar Association.

It is upon the holding company prob-

State Commissions Exercising Control over Utilities

Utility	Number with more or less full control	Partial and inadequate control	None
Electric light, heat, and power	38	5	5
Gas	39	4	5
Street railway	38	6	4
Interurban railway	41	5	2
Telephone	42	4	2
Telegraph	44		4
Water	34	3	11
Hydroelectric	34	4	10
Heating	30	3	15
Pipe line	27	1	20
Railroads (steam)	47		1
Motor vehicle	44	2	2

lem that Dr. Mosher turns most of his attention. He calls it "one of the outstanding gaps in legislative control at the present time." He adds:

> "It has been urged frequently that the public service commissions have no reason for undertaking the supervision of holding companies, because all the transactions of the operating subsidiaries are subject to control. But when it is considered that many holding companies own the majority, if not all of the voting stock of their operating companies, it is obvious that they have become, for practical purposes, operating agencies themselves. It may be stated as axiomatic that utility regulation is but a make-shift if actual documented *costs* are not available. Holding companies frequently impose charges for the managerial, financial, engineering, or other services they render to their operating units. These charges may be based either on the amount of operating revenues or on the cost of the service rendered, but it is clear that in either case effective regulation requires that the commission shall have complete access to the books, records, and officials of the holding company."

New York appears to be the only state in which the statute gives the commission access to the records of the holding company. The law was enacted in 1930, but even this law, says Dr. Mosher, necessarily fails to prescribe full accessibility to the books and transactions of foreign holding companies. He uses the term "necessarily" presumably to indicate the lack of constitutional jurisdiction of New York authorities to probe the records of companies of other states. The author suggests that this difficulty might be met to some extent by forbidding foreign holding companies to acquire stock of local operating utilities without submitting to commission scrutiny, but it is doubtful whether this could be made to apply to foreign control already obtained over local utility securities.

In conclusion, Dr. Mosher reminds utility leaders that their own coöperation will play no small part in making commission regulation successful and holding back the threat of government ownership. It would be smart business policy for them to clean house of their own accord. He says on this point:

> "The writer has no desire to cry alarm, but he is moved to point out that such a situation will ultimately lead to drastic action, regardless of its costs or consequences, unless satisfactory regulation is generally evolved. It can hardly be said that regulation has been tried and found wanting. It may rather be said that it has not yet been tried. A real trial would involve: (1) supplementary legislation along the lines suggested above; (2) the appointment of public spirited and competent commissioners; (3) sufficient funds to permit the employment of a thoroughly qualified and numerically adequate staff; and (4) a leadership in the industry which would emphasize public service rather than profits."

—F. X. W.

REGULATING UTILITIES. By William E. Mosher. *State Government.* February, 1931.

Do Utility Critics Really Want Cheaper Rates?

SHAKESPEARE has said that the devil himself can quote Scripture to his purpose. Of course, it would be out-and-out libel to compare the now defunct editorial staff of the New York *World* to the arch fiend, and even if it were morally permissible to do so, no right thinking man would heap such calumny upon the memory of that esteemed and lately departed liberal journal. So, bearing in mind the injunction of the Latin bard, *nil nisi bonum de mortuis*, let us examine with a most charitable attitude the criticism leveled by Mr. Thomas F. Woodlock at a *World* editorial published just prior to its recent merger with the *New York Telegram*.

It was not exactly Scripture that Mr. Woodlock thinks the *World* was distorting, but it was the nearest thing to Scripture that can be produced by contemporaneous authors in this country; it was an opinion of the Supreme Court of the United States. Chief Justice Hughes, in rendering the court's opinion in the Illinois Bell Telephone Case last December, said that a utility corporation "has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures."

It seems that the *World* quoted this passage with approval, and found the court's remarks "very reassuring" as far as they go. This raises, of course, a very pertinent question: Is the restriction of utility profits always in the interest of the consumer? Or—(to put the proposition in plainer words)—will the cutting down of corporate earnings always result in cheaper rates?

THE interpretation by the *World* of Chief Justice Hughes' remarks moved Mr. Woodlock to discuss this matter very pointedly. He said:

> "Apparently, the fundamental assumption of the *World* and those who think with it on these matters is that the efficiency and initiative of a private plant-management is a static affair—even if it be a trifle better than that of a 'public' plant—and, therefore, the thing to do, in order to get low rates, is to limit profit and siphon all the 'economy' into the rates. This assumption is contrary to all human experience. Does anyone, for example, suppose that in Washington, D. C., there would be today a basic rate of 4.7 cents per kilowatt hour if the profit sharing plan were not there in effect? Or that a still lower rate would be in force in 1931? And does not the Washington plan point the shortest way to cheap current—*if*, indeed, it *is* cheap current that is wanted? *Is it? Or is it that we cannot endure to see profits made in this service?*
>
> "That is the real question that should be honestly faced and answered, if we are to solve the problem of the so-called 'Power Trust.' And we shall never solve it if we keep talking one thing and meaning another, as a good many of us seem to be doing at present. If it really is cheap current that we want there is an easy way to get it, and that way is profit sharing—provided that we agree that private rather than public operation is cheapest. Profit sharing by agreement or contract, on the basis of a fair starting point of 'value' and 'return' and 'prudent investment' thereafter and a division of the 'excess profits' between the company and the public on a principle of 'rebates' or on the principle exemplified in Washington, will almost certainly give the public lower rates for current for years to come than can be obtained in another way. All human experience supports that conclusion."

No doubt very many of the critics of privately owned utility service honestly base their contentions on a hope for lower rates. But it is also probable that many others care very little for low rates. Their chief aim seems to be to strip the utility industry of profitable earnings and, by thus driving capital from the field, bring the business of public service under "social control."

Perhaps there is a great deal to be said for "social control" but if that is the motive behind the antipower campaign, why not be honest about it and stop talking about cheaper rates?

As Mr. Woodlock concludes, "cannot this discussion be dragged into the open

air of free discussion and disposed of on those merits?"

—F. X. W.

THE UTILITY ISSUE. By Thomas F. Woodlock. *Wall Street Journal.* January 3, 1931.

How the Preservation of Trees Becomes a Factor in the Utilities' Public Relations

A PUBLIC relations expert in the utility field has to be somewhat of a philosopher. Take tree trimming for telephone and power lines as an example—which presents a problem that has always been a source of irritation and trouble for a utility company in its relations with the public. This trouble is due to the mental attitude of a large portion of the public which entertains both a "woodman-spare-that-tree complex," and a firm conviction that utilities are somehow a part of a gigantic and malign "trust."

"It is bad enough," says the average man to himself, "to have the trees cut up or cut down for the purely utilitarian purpose of stringing ugly wires across my lands, but to have them sacrificed on the altar of Mammon personified by the power industry is carrying the business a little too far. I will not stand for it. I'll run right over and see the town editor."

And the editor listens, thinks about it, and writes a piece that makes other average men just as mad as the first one.

Mr. Albert W. Dodge, Jr., of the F. A. Bartlett Tree Expert Company, in addressing the national engineering section of the National Electric Light Association in Chicago, warned the utility men that they must expect and deal with these public complexes with patience and coöperation. Patience and education are more desirable, according to Mr. Dodge, in dealing with the anti-trimming aversion, than threats or law suits.

THE speaker pointed out that he had long ago discovered that the average utility manager is far more thoughtful of shade trees than any Old Ladies' Tea Club could possibly be. He stated:

> "I had a very vivid illustration of this in a large town in Massachusetts. I was invited to talk before the Kiwanis Club on the condition of the shade trees of the town. Before the meeting, I was approached by one of the members, taken to one side, and told very confidentially, 'We want you to give the electric light company of this town the devil. They are ruining our trees and want to cut them all down.'
>
> "This rather amused me as I had spent the day before looking into the shade tree situation of the town very thoroughly. I found that over 40 per cent of the poles in the town had been outrigged to avoid shade trees. Miles of tree wire had been used and insulators installed wherever needed. Thousands of dollars had been spent by the lighting company to protect the tree growth of the town.
>
> "On the other hand, I noticed a beautiful row of shade trees along one of the main thoroughfares leading into the town that were in a dying condition. It was not hard to find the reason for this. The street surface had been cemented and cement sidewalks had been installed. The trees lying between the sidewalk and the road had had their roots cut on both sides to obtain sufficient foundation for the cement. In the course of my talk to the Kiwanis, I mentioned these facts and told them that if the electric light company had done as much damage to any similar trees, they probably would have chased the local manager out of town."

MR. Dodge felt that the average utility company was too backward about telling the public just what the company did to help the trees. He said that this type of publicity made good local news and ought to be very acceptable to local news editors.

SHADE TREES VERSUS UTILITY WIRES. An address by Albert W. Dodge, Jr., before the Engineering Division, N.E.L.A., Chicago, Ill. March 10, 1931.

A Ready Reference Chart on the Legal Status of Municipal Plants

THE utility executives should lose no time in seizing upon really valuable publications that contain accurate information. Of such a nature is a chart entitled "State Constitutional and Statutory Law Affecting Municipal Ownership of Public Utilities," published by the Institute for Economic Research.

This chart contains the raw material, the cold facts, the skimmed cream of regulatory information concerning municipal plants. It is a chart that utility executives can well afford to tack up in their offices and in the offices of their public relations men, even in the offices of their counsels. This chart is not only a valuable check on the accuracy of all arguments concerning the legal status of government ownership in the forty-eight states, but has in itself material for articles and arguments. It represents an effort to present a comparative survey of important constitutional provisions and general laws which affect the acquisition, ownership, or sale of public utilities by municipalities. Court decisions interpreting the meaning and scope of the enactments have not been used except in a few instances where the court's interpretation was obviously essential and readily available. The pitfalls in such a method of summarizing legal materials are fully recognized; consequently the tabulation is regarded as preliminary in character.

It groups the tabulated information under the following headings:

Creation of the municipal corporation; authority to engage in the public utility business; procedure for engaging in the public utility business; establishment of debt limitations; exceptions to debt limitations; market area; exemption from taxation; sale or lease of municipal utility; regulation.

—J. D. C.

STATE CONSTITUTIONAL AND STATUTORY LAW AFFECTING MUNICIPAL OWNERSHIP OF PUBLIC UTILITIES. Revised to January 1, 1931. Institute for Economic Research.

Putting Poor-Paying Gas Patrons on a Budget Basis

NOT long ago, the newspapers carried a story of a young lady who committed suicide with the aid of a gas jet. She left a note stating that she had "got even" with the gas company, in as much as they could not collect from her the bill for the gas she inhaled to kill herself.

Although this outburst of bitterness against the gas utility is extreme, Mr. John F. Weedon, superintendent of advertising for the Peoples Gas Light & Coke Company, compares it with other known instances of bitterness on the part of poor-paying patrons and he wants to know the reason why.

After pointing out that the gas company is no better or worse than other types of utility against which such antagonism is not generally manifested, Mr. Weedon answers his own question by setting the bitterness down to two reasons. (1) Because gas service is indispensable. (2) Because patrons usually have thirty days' credit.

People may walk if they do not have carfare, and they send a postal card if they do not have the price of a telephone call—but the best-known way of boiling a kettle is on the gas stove. Bearing out his second contention, Mr. Weedon points out that no one would expect free transportation from a car company if he did not have the fare, or

call the operator names because she refused to connect him before he deposited his coin in the telephone box. But, because gas is absolutely essential to modern life, and because the request for the accumulated indebtedness is made to people whose financial horizon does not extend beyond the seven days of the weekly wage, the gas bill becomes a sort of ogre, a menace, an abomination that maketh desolation if not immediately and at once appeased.

MR. Weedon makes a constructive suggestion to correct this unfortunate phase of a gas company's public relations problem:

> "If people in restricted circumstances could be educated to regard their gas bill as a daily expense, rather than a monthly one, it would have a tendency to reduce the unreasoning antipathy many of them have towards the gas company, and it might also help them to be less wasteful with gas—which must eventually be paid for.
>
> "Investigation department clerks, and others that have to listen to the complaints of reluctant or poverty-stricken payers of gas bills, might be of inestimable service to the gas company if they could inculcate this idea into the minds of the 'poor payers'; gas is a daily expense, not merely a monthly bill. If the customer could be induced to set aside a nickel a meal, or 10 cents a day, to pay the monthly gas bill, there would probably be a credit balance at the end of the month, and paying the gas bill would pay the payer a profit, and be a cause for rejoicing and mirth, rather than curses and tears."

Mr. Weedon's suggestion seems so plausible that one wonders why he does not push his idea still further. Why restrict the preaching of a gas budget gospel to investigation department clerks? Why not educate the entire body of consumers along these lines by newspaper, radio, and circular advertising? Such a program would offend no one and would actually help many consumers in a small way to spend their income to their own greater personal advantage.

—F. X. W.

THAT "INEXORABLE" GAS BILL. By John F. Weedon. *American Gas Association Monthly*. February, 1931.

The Actual and Fancied Economies of Public Utility Mergers

A SUCCESSFUL merger requires less frog and more puddle.

That, at least, is the gist of an article by Charles H. Hatch, in the March issue of *Electrical Manufacturing*, entitled "When Mergers Don't Merge." Mr. Hatch's observations are particularly interesting now that the short but frenzied period of public utility mergers has somewhat subsided. The natural reaction of the public, as well as the stockholders, to all these corporate marriages is to inquire whether or not any of them have been successful. How much of the economies promised by the promoters has been realized?

It has become a matter of common and somewhat caustic comment by stockholders and others that but comparatively few minor mergers have achieved the economies of operation so glibly foretold by their promoters and underwriters. Statistical studies of many industrial mergers, large, small, and medium sized, bear out this accusation.

Why?

The only reason advanced by promoters for mergers back in the gay nineties was the elimination of competition, the creation of monopoly, and the consequent raise of price. This reason for corporate merger became unpopular with the public and illegal before the law. Modern promoters of mergers sound a different key. They emphasize the huge economies to be obtained from joint operation by virtue of the elimination of duplicate facilities.

Now that most of these predictions of the promoters have been exploded, what is the real reason for the modern

merger? Is it still solely the creation of a monopoly, and are promised savings merely camouflage? Mr. Hatch answers this question as follows:

> "I do not believe so. Preliminary studies of proposed mergers nearly always show that the consolidation, centralization, and coördination of production, selling, finance, and administration would make possible economies which the merging companies could not achieve as independent units. Yet these savings have seldom to any considerable degree followed.
>
> "The industrial marriage, so promising at the start, is seldom wholly consummated. The contracting parties after the ceremony find themselves to be married folks in name only.
>
> "Few are the mergers whose constituent companies have completely merged. Too often they retain much of their individuality of policy, a more or less complete set of corporate officers for each subsidiary company, duplicated and decentralized office departments, separate sales departments, and more or less parallel equipment in the way of warehouses, branch offices, and so on."

Of course, there have been cases where mergers have borne all the fruit that was promised of the happy union by the promoters. Mr. Hatch pointed out one consolidation of five competing companies which reduced the executive pay roll by 66⅔ per cent through the elimination of duplicate corporate officers. Another merger of four small factories showed an actual yearly saving of $40,000. Both of these mergers were small. Why is it that the larger mergers are not living up to promised records for economy.

Mr. Hatch gives two reasons. First; pigheadedness. Each officer thinks that the methods which were used in his company are best, and wants to see those methods retained. The resulting situation is a common breeding ground for chronic buck-passing. The second big cause of the failure of mergers to bear economy is personal jealousy. Corporate officers of larger units, having been more or less sizable toads in their old private puddles, frequently decline to give up their jobs as president, vice president, and the like. As a result the merger which ought to be a closely knit unit with a single set of officers continues to operate as a holding company for a group of subsidiaries, each of which pays salaries to a complete set of officers and their retinue of assistants.

Mr. Hatch admits that in some cases of mergers it might be wise to retain all old officers during the early stages while the work of really merging is getting under way. But he further observes that if this weeding out of duplicate executives can be done ruthlessly at the start, it will have salubrious results on the operating expenses.

In addition to the duplication of corporate officials, there is a duplication of clerical assistants and other administrative items. Usually the trouble is that the merger is so large and complex that no one of its officials has the time, or on occasion, the ability to study every activity and work out a new set-up.

In other words, Mr. Hatch concludes that while economy and not monopoly is the primary purpose of the modern merger, the signal failure of these projects to bear out their promoter's predictions to date has been due to the failure of the merged companies really to merge with a clear eye to corporate savings and without regard to whose head rolls into the waste basket.

But the reader must distinguish between statements of general conclusions unsupported by statements of the facts upon which the conclusions rest. Such a statement, for example, as: "Yet these savings have seldom to any degree followed," may or may not be true; but the reader is entitled to know what the facts are upon which the statement is based.

Critics often reason from debatable premises and make statements of conclusions as if they were statements of facts. The reader must consequently be alert to distinguish between them.

—F. X. W.

When Mergers Don't Merge. By Charles H. Hatch. *Electrical Manufacturing.* March, 1931.

The Present Status of the "Iliad of Government Ownership"—Muscle Shoals

THE musty mess of Muscle Shoals is probably the one concrete politico-economic issue about which there is the most discussion with the least amount of understanding. Not that there is any lack of literature on the subject; on the contrary, the public has been bombarded with speeches, editorials, books, brochures, and pamphlets about the relative merits and demerits of government operation for so long that the average honest citizen has long since given up the attempt to master the complicated details. When experts fall out among themselves about what is so and what is not so, how is the mere citizen to ferret out the needles of fact from such vast haystacks of propaganda?

So great has been the need of a simple and succinct statement of the facts regarding this 12-year old congressional bugaboo, that the editor of *The Review of Reviews,* Mr. Albert Shaw himself, has been moved to write a summary of the Muscle Shoals controversy in the April issue of that magazine.

Mr. Shaw's article appears by far to be the best of all the short summaries on this subject yet published. One wonders, after reading it, whether the summary treatment of such complicated issues might not be the best treatment after all for the lay literary digestion. Writers of longer texts always seem to get tangled up in a maze of detailed argument that blinds what little perspective the lay reader might have as to the due significance of all the respective factors. Mr. Shaw's statement of the facts is clean cut and accurate, however much one might disagree with his conclusions. He has, in his five pages, boiled Muscle Shoals facts down to the most elementary essentials. He has traced the short history of the Muscle Shoals development since its birth as a by-product of the National Defense Act of 1916. Then he proceeds to give three possible reasons for the Muscle Shoals development:

(1) National defense: The manufacture of nitrates necessary for the production of munitions. The last war caught us practically without nitrates and dependent upon the then existing Chilean nitrate monopoly.

(2) The hydroelectric generation of cheap power for commercial and domestic use.

(3) The production of cheap fertilizer as an aid to American agriculture.

EDITOR Shaw faithfully depicts the progress of the Muscle Shoals bill from a mere incident of President Wilson's national defense program to its present artificially inflated position as the Iliad of government ownership—the "last stand of the Power Trust," and other weird notions all out of proportion to the real economic importance of this project. Two maps in the Shaw article aid greatly in forming a mental picture of the lay of the land around Wilson Dam, Alabama.

Mr. Shaw next takes up President Hoover's objection to the recently passed Norris Bill as affecting these three considerations of (1) national defense, (2) cheap power, and (3) cheap fertilizer. The writer is apparently in entire accord with President Hoover's veto message.

Under the head of national defense, the President assures us that the War Department can meet all possible requirements at any time through "private enterprise in the manufacture of synthetic nitrogen." Times have certainly changed since Chile held the whip hand in the nitrogen market in 1916. Aside from the development of natural fields in Russia and elsewhere, the synthetic process of manufacture by companies all over the world, including our own Du Ponts and Allied Chemical have made the nitrate monopoly scare an absurdity.

Considered as a power development, the President finds that the prospects of Muscle Shoals are not highly attractive. Mr. Elon H. Hooker, of Niagara Falls, New York, appears to have demonstrated to the satisfaction of the President and of Mr. Shaw that, to make Wilson Dam even a moderate success from a continuous power standpoint, it will be necessary to dam up the Clinch river in Tennessee one hundred miles above Wilson Dam. This proposed dam, called the Cove Creek Dam, will require a further outlay of $100,000,000, in addition to an existing capital investment of about $150,000,000.

Last but not least there is to be considered the proposed great aid to American agriculture—cheap artificial fertilizer. President Hoover seems to be convinced by the opinion of his Department of Agriculture that the existing plants at Muscle Shoals, even if supplied with power at cost or less, could not produce fertilizer as cheaply as it is now being sold in the wholesale markets. The plants must be modernized at the cost of untold millions.

PRESIDENT Hoover, in his veto message, concluded from this evidence:

> "There is no evidence as to the cost of nitrogen fertilizers by the newer equipment, and there is, therefore, no basis upon which to estimate the results to the government from entering upon such a competitive business. It can, however, be stated with assurance that no chemical industry, with its constantly changing technology and equipment, its intricate problems of sales and distribution, can be successfully conducted by the government."

So much for Editor Shaw's facts. His conclusions are more debatable. In his description of the respective positions of the Senate and House of the now defunct and little mourned Seventy-first Session of Congress, Mr. Shaw depicts the Senate as a "blighting influence" seeking to establish its own dictatorship over the future operation of Muscle Shoals, and consenting to the one-year clause (within which the President is allowed to secure a private lessee if he can) as a sop to satisfy Representative Carroll (Lame Duck) Reece and other irreconcilable private operation advocates in the House. The House, on the other hand, according to Mr. Shaw, was highly optimistic concerning the possibilities of the leasing feature of the bill. He concludes that "the majority vote in the House of Representatives was secured on the plea that the final effort was yet to be made. The House assumed that Herbert Hoover rather than George W. Norris would emerge as victorious champion"—meaning, of course, that Herbert Hoover would be able to secure a private company willing to meet the terms of the leasing clause within one year.

If the House assumed that, it was certainly far more gullible than either the Senate who was for government operation, or the President who was against it. The Senate may have been a blighting influence but it surely was better informed. If Editor Shaw's conclusions are all correct the country was certainly in a bad way during the Seventy-first Congress with a Senate that was a blighting influence and a House of Representatives that was not quite bright. It is difficult to believe that the majority of the House had such a different conception of the plausibility of the leasing clause than the Senate that passed it as an obvious but futile gesture, or the President who swept it aside as such from his serious consideration in his veto message.

Mr. Shaw does score a bull's eye, however, in his criticism of that amazing passage in the Norris Bill which required a searching of hearts on the part of the proposed board of three men to control the Muscle Shoals operations. The bill provided that all members "must profess a belief in the feasibility and wisdom" of the government's operations. If ever a law authorized heresy hunting that clause did.

—D. L.

THE UNSOLVED PROBLEM OF MUSCLE SHOALS. By Albert Shaw. *The Review of Reviews.* April, 1931.

WHAT READERS ASK

Out of the mail bag of the editors have come these questions; because they touch upon subjects of broad interest to those in the public utilities field, they have been selected for publication—together with the answers. What questions do *you* want to ask?

Question

Under what conditions will the commissions, generally speaking, grant a certificate of convenience and necessity to a public utility, authorizing it to enter territory which is already occupied by an existing utility holding a prior authority?

Answer

(Editor's Note: This question has such broad significance and is of such particular interest to all concerned with the development of public service commission law, that Public Utilities Fortnightly requested Professor Ford P. Hall, of the Department of Political Science, Indiana University, to answer it. Professor Hall's reply is given below.)

Of course, the answer to such a question must commence by stating that, as a general rule, certificates will *not* be issued to public utilities under the conditions described. There are three general exceptions to the rule that have been developed by numerous decisions of courts and commissions.

The first and most important reason for allowing the entry of a second utility is that the existing company is giving inadequate and unsatisfactory service. To serve a community adequately so as to be entitled to protection against competition, rates must be reasonable, the present service satisfactory, and the whole territory served.[1] If any one of these conditions is lacking a commission may allow entrance. The mere fact that an applicant offers to supply the public with service at a lower rate is not in itself sufficient to obtain entrance.[2]

If the existing rate is reasonable, the lower rate offered might prove disastrous to the utility entering the territory, to the occupying utility, and ultimately to the public. If, on the other hand, the rate is too high, users of the utility have, in most jurisdictions, recourse to adequate methods of bringing about a reduction.

If the service in a territory is not satisfactory, and another utility is requesting a certificate of convenience and necessity to enter the field, the commission has two courses it may pursue: It may allow entrance at once, or it may give the occupying utility an opportunity to improve its service before granting a certificate.

The first procedure is followed by commissions in a few states, where, if the service is unsatisfactory at the time of application, the commission will issue a certificate to the petitioner.[3] There are a number of reasons for adopting this alternative. Unless a utility is allowed to enter at once, there will be little incentive to new companies to make application as it is improbable that they will go to the expense and trouble of filing a petition if the only result is to force the existing company to improve its service. Again, such a procedure serves the purpose of forcing utilities to keep up their standards at all times, for if they become remiss in their duties at any time this may justify the entrance of another utility.

The second procedure is that most frequently followed by commissions; namely, that a utility already occupying the field will be allowed to improve its service before granting permission to another to enter. This is the better rule. If duplication and competition are undesirable there is little to justify a departure in cases of this sort except as a last resort to obtain better service for the public. Under normal circumstances there are other means of obtaining the required service than that of holding over a utility continually the threat of competition. But even in jurisdiction where this second procedure prevails, such an opportunity is not always given. If it is impossible or not

feasible for the company to render the required service it is but a waste of time for the commission to order improvement. A new company will be granted a certificate without giving the old one further chance.[4]

THE second reason for allowing entrance into an occupied field is that the petitioner is intending to give a new kind of service. The most difficult questions which present themselves in this connection are whether and when to issue certificates to motor bus or motor truck applicants planning to compete with railroads and street railways.

The motor carrier might appear, on first thought, to be offering a service sufficiently new and different to justify the granting of its petition. A few commissions have so held.[5] This does not represent the majority point of view which requires the motor applicant to show more than the mere difference in the type of service it can offer. There are, it is true, certain decided advantages of motor service over railway to the public. Transportation by motor trucks is advantageous in that there is no necessity to box and crate; there is no billing; and it offers door-to-door delivery.[6] In case of passenger busses, the advantage lies chiefly in the fact that they pick up and deliver at any point on the route. However, these advantages are more than offset by the disadvantages which may arise from direct competition between these types of carriers. The paramount consideration in granting or refusing a certificate is whether the convenience and necessity of the public requires the new service.

It must be remembered that it is the convenience and the necessity not of a small number who might benefit from the issuance of a certificate, but the convenience and necessity of the whole public served by the railroad; also not the convenience and necessity of the moment but that over a long period of time. To permit motor competition on the pretext that it is a new type of service can easily give rise to financial disaster for railroads and street railways. So long as these utilities have important functions to perform, public convenience and necessity is best served by affording them an adequate measure of protection. Public convenience and necessity in the broadest sense will be better served by a strong and efficient railroad system than by granting a motor service which will benefit but a few.

However, the fact that railroads and street railways are established systems of transportation should not blind commissions to the possibilities of progress. If railroads and street railways are obsolete, then commissions should not protect them, or at least not longer than necessary to make the change from them to other forms. Any other attitude would harness the public to the past. A change was made from stage coach and water transportation to rail. Perhaps it will be necessary to change from rail to some other form. But commissions must proceed cautiously, and not permit old systems to be supplanted by new only to find that the new cannot adequately perform what was demanded of the old.

The important question is whether the new utility can supplant the old completely. To answer this several further questions can profitably be asked:

Will the motor companies serve all the territory served by railroad or street railway?

Will the motor carrier transport all classes of goods and persons?

Will it operate at all seasons of the year and in all kinds of weather?

Will its service be as rapid, as cheap, as comfortable, as efficient as the railroad?

If these questions can be answered in the affirmative then commissions should allow it to supplant other carriers for the advantages listed above would swing the balance in its favor. At present the motor carrier is not prepared to supplant railroads. Since this is the case, for the present at least, its service should be supplementary to that of railroads, serving territory unserved by rail or serving territory inadequately served by rail.

These considerations, of course, do not apply to motor carriers and railroads only, but apply with equal force to all cases where new types of utilities are seeking to replace old. If new forms of transportation, of communication, of lighting develop as they have in the past, commissions can direct, guide, regulate the transition from the new to the old so that the public will not suffer the economic shocks and disasters it has suffered from such changes in the past.

THE third reason for allowing the entrance of a utility into occupied territory is that competition in a few classes of utilities is desirable. For instance, this is the case with taxicabs. One commission has declared:

> "The taxicab business is one of the few which have been recognized, under regulatory law, as offering in some instances advantages to the public through the creation and maintenance of competition."[7]

Competition among movers of household goods has been favored also and several have been allowed to enter the same field.[8] These are enterprises which are very personal and patrons should be allowed a wide range of choice. It may be added that these are enterprises which are readily adapted to business on a small scale; also enterprises in which competition will do but little damage to the using public, because there is little useless duplication of equipment.

—FORD P. HALL.

CITATIONS

[1] Pacific Gas & E. Co. *v.* Great Western Power Co. (Cal. 1921) P.U.R.1922B, 495.

[2] *Re* Townsend (Colo. 1927) P.U.R.1928A, 175; *Re* Steele (Cal. 1920) (anno.) P.U.R. 1921C, 490; West Suburban Transp. Co. *v.* Chicago & W. T. R. Co. (1923) 309 Ill. 87, P.U.R.1923E, 150; Fornarotto *v.* Public Utility Comrs. (N. J. Sup. Ct. 1928) P.U.R. 1929A, 360.

[3] Pacific Gas & E. Co. *v.* Great Western Power Co. (Cal. 1921) P.U.R.1922B, 495; See Farmers Electric Power Co. *v.* Ault (Colo. 1920) P.U.R.1920D, 214. The most extreme case of this kind is *Re* Swan Creek Electric Co. (Idaho, 1915) P.U.R.1915F, 323, in which the commission granted a certificate to a petition when the existing company was not furnishing adequate service at the time of threatened competition, namely at the time a franchise was secured by the applicant.

[4] *Re* Clark (N. Y. 1920) P.U.R.1920D, 368; *Re* McCommon (Wyo. 1925) P.U.R.1925E, 330.

[5] *Re* Troy Auto Car Co. (N. Y. 1916) P.U.R.1917A, 700; *Re* Demoney (N. Y. 1920) P.U.R.1920C, 402; *Re* Wedgwood (Utah, 1921) P.U.R.1921D, 262; *Re* Streeper (Utah, 1924) P.U.R.1925A, 284.

[6] *Re* Pearl (Nev. 1919) P.U.R.1919F, 299.

[7] *Re* Penn Taxi Co. (Pa. 1925) P.U.R. 1925E, 427.

[8] *Re* Consolidated Furniture Moving Corp. (Cal. 1924) P.U.R.1925A, 202.

QUESTION

The common council of a city recently demanded an investigation of gas and electric rates on behalf of small consumers. The resolution stated that large consumers could usually take care of themselves but that small consumers were defenseless unless protected by public regulatory bodies. Just what is meant here by the term "small consumer?"

ANSWER

The term "small consumer" is rather an indefinite one, but the probability is that what was meant was the domestic consumer. Commercial consumers are usually regarded as large users and domestic consumers as small users.

There seems to be two theories with reference to the treatment of large and small consumers. One is that the rate to the small or domestic consumer should be as low as possible in order to encourage the greatest household use; that is to say that the interests of domestic consumption should be emphasized over those of commercial consumption.

The other theory is that without extensive commercial consumption domestic rates would have to be very much higher than they are; that the domestic consumer really receives more benefit,—although it may be indirect,—from the encouragement rather than the discouragement of industry; that the encouragement of industry increases work and makes it easier for domestic consumers to pay for current for domestic use; and that it also tends to decrease domestic rates themselves. The advocates of this theory say that domestic rates amount to only a few cents a day for the average family anyway and that the saving of the very small amount possible under any theory of rate making for the domestic consumer would be very small and not at all to be compared with the saving of his job.

Sometimes a distinction is made between large and small consumers of domestic service. The small consumer then would be regarded as the consumer attached to the service who used no service or who used less than enough to pay for the cost of carrying him. In such a case the large consumers would be those who use enough service to be regarded as paying customers. This distinction between large and small consumers comes up in discussion of the equity of the minimum or service charges or rate differential between various blocks of a rate schedule.

Bus Substitution Does Not Mean Loss of Rail Franchise

IN granting a railway utility authority to substitute bus for rail service, the Connecticut commission inserted in its order a proviso by which the carrier would not suffer the loss of its franchise to operate over rails, notwithstanding the remote possibility of the restoration of such a type of service. Re Connecticut Company, Docket No. 5503.

The March of Events

Alabama

Legislature Probes Power

A LEGISLATIVE investigation of electric utilities has been authorized, and a committee comprising members of the senate and of the house has undertaken the task. The investigating committee has power to subpoena records of the service commission and the tax commission to get at the facts.

The author of the bill inaugurating the investigation charged that there was a discrepancy of $100,000,000 between the Alabama Power Company's claimed valuation for rate-making purposes and the valuation it submits to the state tax commission for tax purposes, says the Alabama *Journal.*

Connecticut

Cabs Slash Rates While Rate Order Is Stayed

OPERATORS of taxicabs in the state have been waiting for the result of the appeal from the order of the commission fixing taxicab rates. Some of the companies have been operating under cut-rate schedules while the operation of the commission order is stayed under a decree of the court.

The announcement of a new rate for the Yellow Cab Companies in Bridgeport, says the Bridgeport *Telegram,* has been considered as a declaration of war upon the Star Taxi. The president of this company has declared that the rates of his firm would be changed so that they would be the lowest in the city.

The commission order fixed rates at 20 cents for the first mile and 10 cents for each additional third of a mile. The Yellow Cab rates were fixed at 15 cents for the first quarter mile and 5 cents for each additional quarter mile with no charge for extra passengers. The *Telegram* states that the Star Taxi has been charging 15 cents for the first two fifths of a mile and 5 cents for every additional fifth mile with no charge for extra passengers.

District of Columbia

Additional Charge on Hand Phone to Be Eliminated

THE Chesapeake & Potomac Telephone Company, according to the Washington *Post,* has submitted to the commission a plan which will enable the users of the hand telephone to terminate the 25-cent extra monthly charge at the end of a year and a half.

Under the new schedule, which would become effective May 1st, the extra charge would be assessed only until $4.50 is collected during a period of continuous service. A subscriber may, however, make a cash payment of $4 in lieu of the monthly payments, and thereafter pay only the same fee as for the desk set. The *Post* adds:

"Subscribers who have used hand sets since June 30, 1930, or before, will be credited with $2.50 payments on the hand phone, and by paying an additional $1.50 they may end their extra payments, as the transaction will be considered upon a cash basis, according to a statement issued by Hanse Hamilton, general manager.

"The providing of hand sets involves several factors which have an important bearing on the company's operations, Mr. Hamilton stated. The initial cost is about twice that of the desk set and the maintenance charges are substantially higher.

"Furthermore, the rapid installation of a large number of hand sets would involve considerable loss because of the retirement of desk-set equipment before it had lived its useful life. While the hand set is more convenient it does not give any better service than the desk set.

"Adjustment in the hand-set rates follows the issuance of an ultimatum to the telephone company to explain why the extra charge should be retained when some of the hand

phones have been in service for three years. In answer to this inquiry the company submitted a mass of statistics to show that the hand set costs much more to manufacture and slightly more to maintain.

"The commission, upon receipt of these figures, replied that they did not present sufficient reason to continue the extra charge indefinitely."

Court Battle over Power Rates Is Forecast

THE refusal by the Potomac Electric Power Company to enter into any compromise with the commission in regard to rates is seen by the newspapers as an indication that a court battle for a reduction of Washington's electric rate is inevitable. The commission claims that under the present system rates are excessive.

The commission has received a letter from Vice President S. Russell Bowen, of the utility, stating that the board of directors has pointed out that the gross and net earnings of the company during January and February suffered considerable reductions over those returns for the same months in 1930. Other reasons are also given why the company believed that it should not accede to a suggested modification of the consent decree reducing its basic rate of return from 7½ per cent to 6½ per cent with a sliding scale of reductions to take care of excess earnings. The Washington *Star* says:

"The resolution sets out that the agreement contained in the consent decree was entered into in good faith by the parties concerned for valuable consideration, and that it is a profit-sharing instrumentality advantageous to the company and the public alike. The company sets out the fact that the maximum electric rates here are the lowest in all cities with 150,000 population or more, and taking this into consideration it is denied that the corporation's return has been excessive."

The commission prior to the suggestion of a compromise had drawn up a petition to equity court asking for modification of the decree in such a way as to decrease the maximum allowable to the company. The commission could file this petition, or set new rates independent of the present decree, or order a valuation of the utility property. Either of the latter two courses, says the *Star*, was preferred by People's Counsel Richmond B. Keech because, if the company objected to either, it would have the burden of establishing a case for relief by taking the matter to court. But, this paper continues, the commission was thought to lean to the former method, and the petition might be filed.

Georgia

Equal Rates Asked in Crisp County Rate Battle

THE Georgia Power Company has asked the commission to permit it to put into effect the same rates charged by the Crisp county electric plant. This was a further step in the battle which has been waged between the power utility and the county-owned plant.

The county some time ago erected a hydroelectric plant to run in competition with the electric utility. When this was put into service last year, rates were announced 25 per cent below the rates of the Georgia Power Company in that territory. As a counter attack upon the rate cutting by the county plant, the power company announced a rate schedule 35 per cent below the rates of the county plant.

Then followed an order by the Georgia commission requiring the utility to show cause why the low rate schedule in effect in Crisp county should not be applied all over the state. This order was resisted in the courts, but it was held that until the commission had taken some definite action no injunction should be issued to restrain its proceedings.

Old Gas Rates Go into Effect under Temporary Order

A STATUTORY court of three Federal judges has temporarily enjoined the public service commission from enforcing a new gas rate schedule, including a service charge, against the Georgia Public Utilities Company. The rates in effect prior to the commission's decision in February, 1930, will prevail during hearings by I. S. Hopkins of Atlanta, who has been named master to investigate.

The court, in granting the injunction, ordered the utility to post a $30,000 bond to assure reimbursement of consumers, if, in final disposition of the case, they are found to have paid too much under the temporary rates.

The injunction was sought on the ground that the rates established by the commission permitted such a low rate of return upon the fair value as to be confiscatory.

Illinois

Transit Reorganization Plan Completed

THE completion of the financial reorganization setup of Chicago's transit lines under the new traction ordinance, providing a new unified system, has been declared operative by Halsey, Stuart & Company, reorganization managers, says the Chicago *Daily News*, which adds:

"Indorsed by the holders of approximately $175,000,000 of traction securities, the plan marks the final step, subject to approval by the Federal court, in the reorganization of the local elevated and street car lines into the Chicago Local Transportation Company.

"Attorneys have been working for several weeks drafting the various papers and documents and these will be presented immediately to Federal Judge James H. Wilkerson for his consideration and final approval, Halsey, Stuart & Company announced today. The court action is made necessary by reason of the fact that the properties of the Chicago Surface Lines are now being operated by receivers appointed by the court.

"If the court approves the sale of the properties to the Chicago Local Transportation Company the new organization then will be in a position to accept the traction ordinance and to start unified operation immediately of the lines and properties of the surface and elevated lines. Under the ordinance the operation of surface and elevated lines will be consolidated, augmented by subways through the central business district and supplemented by feeder busses in the outlying territory. Universal transfers also are to be inaugurated."

Boycott of Telephone Service Is Threatened

A PARTIAL boycott of the Allied Telephone Company has been threatened because of higher rates authorized by the commission. Petitions have been circulated in LaSalle to obtain signatures of persons who will refuse service unless the old rates are kept in effect.

Subscribers contend, says the LaSalle *Post-Tribune*, that they cannot afford to pay the increase in rates and while willing enough to continue to pay the old rate, they will do without the service rather than meet the increase.

Indiana

City Seeks to Halt 10-cent Fare in Gary

THE city of Gary has filed suit in the East Chicago superior court to vacate the order of the commission permitting the Gary Railways to increase street car fares from 8 to 10 cents.

Complaint is made that the order is "unreasonable, unfair, and discriminatory" to residents of Gary. It charges that the commission ignored the appraisal of its own engineer in fixing the valuation of the properties for rate making. An attack is also made upon the action of the commission in allowing the railway company $500,000 as going value, on the ground that a monopoly is not entitled to include good will or going value in valuation.

The complaint is also made that street car riders in Gary are discriminated against because the utility was permitted to include other lines which are alleged to be unprofitable. Another contention is that the order took into consideration the value of leased lines which the company operates but does not own.

Maryland

Legislators Give Commission Broader Powers

THE house on April 2nd passed a measure giving the public service commission complete jurisdiction over the operation of taxicabs in Baltimore. Provision is made in the bill for the requirement of liability insurance.

The commission for several months has been seeking to force the Sun Taxicab Com-

pany to take out public liability insurance or maintain an indemnity reserve fund, but the courts have decided that the commission did not have authority to make such requirements.

Harold E. West, chairman of the commission, according to the Baltimore *Sun*, has stated that soon after the bill becomes law the commission would issue rules for the operation of taxicabs, which probably would include the following provisions:

"Meters will be required on all cabs.

"Drivers must be owners of the machines or employees ot the owning company.

"Drivers must be registered.

"Drivers must secure permits from the commission, a separate permit for each cab."

A controversy developed in the legislature over the question of requiring taxicab meters. Many of the independent operators, it was said, could not afford meters, and one of the legislators is quoted as saying that he failed to see why a taxi meter should affect the safe operation of taxicabs, and he failed to see why what is in effect a tariff should be placed on independent operators and small companies.

An amendment to the bill, which was sent back to the senate for concurrence, excludes taxicabs operating in the counties from jurisdiction by the commission. The original act provided that incorporated towns of more than 50,000 population could be included under jurisdiction on written application.

Massachusetts

Towns Complain of Street Lighting Rates

RECENTLY the Worcester Suburban Electric Company announced new street lighting rate schedules which would result in certain decreases. A protest was made by nine Worcester county towns which contended that the company should present another offer that would be more in proportion to what it had been taking in dividends.

The department of public utilities on March 30th held up the new schedules for a period of thirty days in order to give the selectmen an opportunity to determine how great the savings would be. A hearing was ordered.

Michigan

Vote against Municipal Ownership

THE voters of Bay City at the recent election repudiated a proposal to build and operate a municipal electric plant. They also defeated a candidate for the city commission who made his campaign on a municipal ownership platform.

A committee of one hundred representative citizens carried on the opposition to municipal ownership. They organized and financed an educational campaign based, according to reports, upon "repudiation of radical theories and doctrines."

Minnesota

St. Paul Council Gives Opinion on Proposed Bills

INDORSEMENT of a group of bills pending before the state legislature has been given by the city administration of St. Paul while other bills have been condemned, according to the St. Paul *Pioneer-Press*.

The city officials approved bills providing for removal from the state railroad and warehouse commission of powers in grade crossing matters; a valuation of all telephone properties in Minnesota to establish a rate-making basis; authorization of the city council to insure city employees operating city automobiles against damage by reason of the operation of such cars. On the other hand, they condemned a bill which would place electric light and power companies under the jurisdiction of the state regulatory commission.

New Jersey

Consolidation of Train Service Is Planned

A PROPOSAL to consolidate Pennsylvania and Reading train service throughout southern New Jersey, says the Philadelphia *Public Ledger*, is being considered by the New Jersey Commission. This program is linked with plans for building a high-speed transit line across Delaware river bridge and eventually a tunnel between Philadelphia and Camden. The *Public Ledger* adds:

"The proposal, of far-reaching importance to the railroads and the communities they serve, is known to have the sympathetic support of the railroad companies. The scope of the inquiry, directed by the legislature, and which led to the plan, has been made wide enough so that it covers all railroad services—seashore as well as suburban—in all counties below Trenton. . . .

"Railroad officials have discussed consolidation proposals for some years. With consistent losses the railway lines, particularly local routes near Camden, have been suffering severely in recent years and the companies have been forced to curtailments in some directions that have been a serious detriment to some localities.

"A move for consolidation several years ago came to nothing because of several interfering factors, but since then the railroads, having tried lower rates and special tickets of various kinds without making any important gains, are understood to be definitely in favor of consolidation.

"When the 'four-party' consolidation proposal for the main railway systems of the East was announced last January it developed that the Pennsylvania and Baltimore and Ohio officials were in accord on a consolidation plan for southern New Jersey—the four-party plan including the incorporation of the Reading-Central of New Jersey system into the Baltimore and Ohio.

"It is now said that the Reading officials, in any event, are likely to favor a satisfactory consolidation plan in southern New Jersey, a point of importance, considering that the larger 'four-party' consolidation plan may require some years to put through."

New York

Metropolis Plans Higher Rates for Water

ANNOUNCEMENT has been made by Controller Charles W. Berry of New York city that a special committee of which he is chairman has decided that a 20 per cent increase in city water rates is necessary to pay the cost of tapping the Delaware river for additional city water. A summary of the findings of the committee was sent to civic organizations with a request for helpful criticisms and suggestions.

A change has also been considered by the committee relating to privately owned buildings now exempted from water rates. The committee proposes that all such buildings except churches be required to install water meters at their own expense as a check against waste of water. Installation of meters in all city-owned buildings and the possible extension of this system to existing public buildings is also recommended.

Property owners, already burdened heavily with assessments and taxes, according to a statement by the president of the Real Estate Board of New York, would be subjected to further hardship if the proposed increase is approved by the board of estimate. He said that the question is not whether such an increased water rate is proper but the question is rather, how much longer can the property owner keep from falling beneath the load that is being put upon him from time to time.

Who Should Pay for Multiple Dwelling Installation?

THE question whether the consumer or the electric utility should be burdened by multiple dwelling installation has been raised before the public service commission. The Brooklyn Edison Company offered testimony on March 25th to support its contention that the customer should pay. Brooklyn electrical contractors instituted the proceedings against the company.

The proceedings involved particularly a refusal by the utility to install service equipment at premises in Brooklyn. John C. Parker, vice president of the Edison Company, testified that the cost of this installation otherwise would be charged to overhead expenses and the general consumer would bear the cost. Under amended rules of the company adopted in 1929, the cost of such installation made within the property lines of a multiple dwelling, should be paid by the

tenant to whom electric service is supplied.

The Electrical Club of Brooklyn contended that the installation paid by one tenant served all other tenants in the house. On this account it urges that the utility should pay for the installation.

A refrigerator contractor testified that the ruling of the utility had seriously affected his business. He said in many cases the cost of installation was as high as $100 for a refrigerator, and that the wiring and meter boards involved served all tenants in the building.

Refund under Optional Rate Schedules Is Asked

A REFUND for alleged overpayment for gas is asked by A. J. Hamilton of Brightwaters, Long Island, against the Long Island Lighting Company in proceedings instituted before the public service commission, says the New York *Times*, which informs us:

"Mr. Hamilton, vice president of the General Outdoor Advertising Company, charged he had overpaid on gas supplied to him by the Long Island Lighting Company since November 18, 1928, when the company had instituted a voluntary change in rate, of which he failed to take advantage.

"Counsel for the lighting company said the company employed a dual set of rates, one standard and the other on an option basis. Public announcement of the change, it was added, had been made in Suffolk county newspapers, with the statement that a consumer was entitled to the optional rates only when he made application to be placed on that basis."

Oregon

Rate Investigations Ordered

C. M. Thomas, public utilities commissioner, has ordered the Pacific Telephone & Telegraph Company to appear before him for a formal investigation of rates, rules, tolls, charges, regulations, methods, practices, and services of the company.

Notification was also sent to the Northwestern Electric Company that it must place in the commissioner's hands by May 1st information regarding its rates, charges, and services. The Portland *Journal* states that investigation of this company started back in 1928 but the company was granted additional time, which was up June 7, 1929.

An investigation has also been ordered into the charges and practices of the Mountain States Power Company. This company operates extensively in the central Willamette valley and in the Pacific coast counties of the state.

Previous hearings in connection with the rates of the Pacific Telephone & Telegraph Company were held in 1923 when the public service commission issued an order fixing rates based on the property valuations of the corporation for the year 1916.

Formal investigation of the rates, charges, and practices of the California-Oregon Power Company has also been ordered. Likewise the Eastern Oregon Light & Power Company has been ordered to submit its rates, charges, rules, and regulations for investigation by the commission.

Investigation into street railway fares and electric rates generally in the city of Portland, according to the Portland *Journal*, was to be resumed. The street railway case was brought before the commission in April, 1929, when the then Portland Electric Power Company filed its tariff providing for a 10-cent fare, which after two suspensions was permitted finally to become effective. The case, it is said, was never closed on the commission's docket.

Pennsylvania

Public Confidence in Utilities Necessary to Welfare

PRESIDENT John E. Zimmermann of the United Gas Improvement Company, in the company's annual report, makes the statement that in the best interests of the public and of their stockholders, public utilities must be fairly and effectively regulated so as to command the full confidence of the public. The utilities, he said, should welcome constructive criticism, but, on the other hand, they are naturally called upon to combat such criticism as is manifestly unfair or is made by those endeavoring to prejudice the public unjustly or to try to establish a political issue. He has laid down the following five cardinal points:

"1. Effective state regulation.

"2. Rates should be constantly adjusted so as to yield only a fair and reasonable return

on the value of the property devoted to the public use.

"3. Publicity in the financial affairs of a public utility inspires confidence on the part of the stockholder and the public.

"4. Holding companies are essential to the expansion and development of public utilities and must not be used to exploit either the consumers or the operating company.

"5. Government should not compete with any of its citizens in any field of business."

Owner Objects to Separate Water Meters

THE Scranton-Spring Brook Water Service Company, which has been the center of a storm over rates for several months, now faces a new attack by reason of its insistence that separate water service pipes and meters shall be installed in buildings where more than one family dwell.

The company, according to the Scranton *Times*, notified the owner of a four-family flat that he must bear the cost of running the pipe lines as far as the curb line in addition to meeting the bills for installing piping from the meters into each flat. The maintenance expense of the four pipe lines must also be borne by the property owner, according to word received from the company. The company would care for the meters. Formerly the entire building was served by a single meter.

Complaint was made at the city hall in Scranton, but the property owner was informed that the city was powerless to aid him, and that there was nothing to prevent the company from insisting upon the separate installation. The plumbing inspector said that he had received a number of complaints to the effect that persons constructing new double houses were being forced to have separate meters installed.

Rhode Island

Newport Water Rates Are Termed Excessive

THE Jamestown town council has petitioned the public utilities commission for an investigation of the rates of the Newport Water Company with the view of bringing about a downward revision, says the Providence *News-Tribune*.

Residents have also protested against the requirement of the company that all water bills be paid in advance on June 1st of each year. Water has been shut off, it is said, because of the inability of some of the residents to make the payment within the time allotted by the company.

The commission is asked to order the water company to send monthly bills for the amount of water used, and also that meters be installed in the homes so that the amount used by each home can be measured.

Tennessee

Trolley Bus Not a Street Car

A TROLLEY bus line is not a railway and, therefore, an easement granted to the Knoxville Power and Light Company for railway purposes did not hold when the trackless trolley was substituted, it has been held by Chancellor Robert M. Jones, according to the Knoxville *Sentinel*.

The chancellor sustained the argument of an owner of land used for a loop at the end of a bus line. The owner asserted that the company had no right to an easement across his land which had been granted to them for "railway purposes."

The easement was obtained when tracks were laid for the street car line, and when the change to busses was made the company took up the tracks and substituted a road bed. The abandonment of the rails was declared to be a forfeiture of the easement.

Commission Repels Attack

THE state railroad and public utilities commission has issued a declaration that it has no jurisdiction over the sale of securities of the Southern Cities Utilities Company in Tennessee. This was to refute certain implications that the commission failed to protect the public interests in connection with the sale, it is said.

The declaration was addressed to a legislative investigating committee and was called forth by a joint resolution recommending that the affairs of the commission be investigated. Says the Nashville *Tennessean:*

"The commission declared that since the Southern Cities Utilities Company is not an operating company in Tennessee and owns no property in this state, its members were powerless to regulate or forbid the sale of securities by the company."

The commission stated that it was justly proud of the fact that no investor in Tennessee has ever lost one dollar through the purchase of stocks or bonds issued and sold by authority of the commission by any operating utility within the state of Tennessee.

The commission pointed out that regulation of the sale of securities of holding companies doing interstate business is a matter which must be controlled by the National Congress and not by the state, and the commission is on record as having urged such regulation repeatedly.

Turning to the matter of rates permitted to be charged by various utilities, it is pointed out that such decisions are made after careful investigation, with the use of skilled engineers, auditors, and legal counsel, and with due regard being given to the viewpoint of the United States Supreme Court respecting the fixing of rates for utility service upon a reasonable return to the concern involved. Following this course, the commission has avoided long litigation and prevented encroachment by the utilities upon the limitations of the courts, state and Federal.

The statement concluded with the remark that the members of the commission could have played the roll of demagogues and sought and secured the applause of the unthinking by establishing rates so low that they would not have resulted in a fair and reasonable return on the actual value of the property employed in public service, but such a policy would not have resulted ultimately in lower rates for the public, but in higher rates. The Supreme Court of the United States would not have permitted such rates to stand. The state would have been involved in a multiplicity of long drawn-out costly and fruitless litigation. Confusion would have been produced, capital would have been frightened from the borders of the state, foreign capital would not have come to Tennessee seeking investments.

Washington

County Residents Start Power District Movement

A MOVEMENT to form a power district, under legislation passed last year, got under way at a meeting of two hundred residents from all parts of Spokane county early in April, says the Spokane *Spokesman Review*. Senator C. C. Dill and others condemned the private power companies for charging "unjust rates and failing to give adequate service." The consensus of opinion was that action should be taken to place power district propositions on the ballot at the general election in 1932.

In reply to a question whether the residents would have to pledge their land in any way if power districts were organized, John Haney, master of Spokane County Pomona Grange, said that taxes would be secured by the property, but utility bonds would be paid out of revenue. He said that the district must follow precinct lines and a district would be formed by the vote of a majority in the district.

One of the speakers declared that the power district should be organized in a big way and proceed to build an enormous hydroelectric plant, preferably in the Columbia river at Grand Coulee, to generate 2,000,000 horsepower and supply water for irrigating the Columbia Basin irrigation project. He said he would "issue $500,000,000 of bonds and sell them to Henry Ford." He declared that Russia is "going way ahead of us, and they are putting in power for the people."

West Virginia

Test Case on Refusal to Pay Higher Rates Is Planned

CITY officials objecting to the higher rates in effect following an order by the commission authorizing an increase for the United Fuel Gas Company have planned to test the rates in a lower court action, notwithstanding the pending proceedings for review of the commission order in the supreme court.

Under a plan mentioned in the Charleston *Mail* a consumer might offer to pay his gas

bill to the United Fuel Gas Company under the former rate. If the company refuses to accept payment, the consumer could apply to a circuit court either for a writ of mandamus to compel acceptance of payment on the lower basis, or for a writ of injunction to prevent the company from cutting off service for nonpayment.

The supreme court during the latter part of March upheld rates fixed by the commission to be charged pending further proceedings. Appeal to the court had been made upon the ground that a court order setting aside new rates and a valuation upon which they were based should have restored the rates effective prior to the company's application for a rate increase. The gas company contended that the decision continued temporary rates in effect. The commission sustained this view.

The Huntington city commission, according to the Charleston *Gazette*, has instructed the city auditor to refuse to pay the higher rates and will proceed to defend its position in the circuit court. Charleston was considering similar action.

Wisconsin

Bill Is Aimed at Holding Company Control

A RECENT bill introduced in the Wisconsin legislature by Senator Thomas Duncan provides for control of public utility holding companies and otherwise strengthens the jurisdiction of the state railroad commission. The measure, according to its sponsor, is "a drastic measure intended to give the commission power to aggressively represent the public interest and to protect the people of Wisconsin against the increasing centralization of control of their public services from Chicago and New York." The *United States Daily* says concerning this proposal:

"Among its other provisions, Senator Duncan said, the bill would enable the state commission to prevent the installation of 'expensive so-called improvements such as dial telephone service whenever they (public utilities) think that by such installation they can build up their property, and be entitled to increases in rates.'"

Directors of public utility companies under this measure must be residents of the state. Another provision prevents utilities from paying dividends on common stock (ordinarily held by controlling corporations) if the value of the company's assets is less than the liabilities. Furthermore, the commission may prevent the payment of dividends to holding companies if the companies are not setting up an adequate amount for depreciation.

Canada

Gas Companies Fight for Territory

A GAS war seems to have been started in the Province of Ontario. One of the indications was a cut in rates at Hamilton by the Dominion Gas Company from 75 cents to 25 cents per thousand cubic feet.

Honorable Charles McCrea, minister of mines, says the Toronto *Star*, has been urged by Austin B. Smith, M.P.P., to instigate a full inquiry by George Henderson, K.C., gas referee, into the operations of all gas companies. Mr. Smith took the position that the consumer would be the inevitable loser in the war between the utilities, and that either the company was enjoying excessive profits or was operating from huge reserves. The Dominion Company competes with the Union Company, which several years ago took over the United.

Applications have been made by the Dominion Natural Gas Company for franchises in London and Windsor but, says F. A. Morse, president of the Union Natural Gas Company of Canada, which controls the city gas of London, these applications "don't mean anything."

Mr. Morse went on to say, according to the *Star*, that the other company is "fighting a losing battle" in Hamilton and now are "trying to bluff" the Union Company. He continued:

"We will battle them to a finish and present indications are that we will be on top when that comes. We know the Dominion hasn't got the gas to supply any new markets. These applications in London and Windsor are just calculated to embarrass us."

He declared further that the real question at issue is whether American capital shall obtain control of the market.

The Latest Utility Rulings

A Utility May Not Protect One Patron from Competition by Another

PUBLIC service commissions, in the exercise of their regulatory powers over public utilities, are occasionally called upon to decide matters that directly affect the economic status of various nonutility companies. For instance, it has been the practice of some of the state commissions to adjust intrastate rail rates so as not to give shippers in one community an unfair commercial advantage over shippers in another community. In West Virginia, a statute requires the commission of that state to consider the effect which a proposed hydroelectric development would have upon established industries of the state, such as coal mining, and upon economic conditions in the state generally before approving of such a project.

A public utility itself, however, will not be permitted to exercise such discretion even though it may ultimately redound to its own benefit. Such is the important point to be obtained from a recent decision of the Nebraska commission sustaining a complaint by a farmers' coöperative grain association against a railroad for refusing to permit the former to use a moveable automatic device known as a "blower loader" in transferring grain directly from the farmers' wagons or trucks to rail cars.

It seems that the rail carrier had decided upon a policy of permitting one individual farmer grain shipper to use such a device, which appears to be much more safe and efficient than the old slow and laborious task of scooping the grain into cars by hand; but it refused to permit an association of farmers to use the same instrument. The reason for this, according to the carrier's witness, was to protect the business of the grain elevator operators who had been located on the carrier's line for many years.

Now it may be true, as the carrier's witness explained, that the utility was only trying to protect its own business by encouraging a class of more permanent and substantial consumers, rather than a flexible and transient group. Yet, such a discrimination against the farmers' association is not permitted by law. The Nebraska commission held that the carrier's refusal to the association was unjustly discriminatory, and ordered that the use of the loading device should henceforth be permitted. *Farmers Coöperative Grain Association v. Chicago, Burlington & Quincy Railroad Co. (Neb.) Formal Complaint No. 674.*

The Federal Power Commission Hands Down Its First Orders

THE Federal Power Commission has handed down on March 31st and April 3rd, respectively, the first two orders since its complete and much discussed reorganization in January of this year. The March 31st order had to do with a dam proposed by the Arkansas-Missouri Power Company on the Spring river in Arkansas near the Missouri line. The commission decided, since this river was not navigable and did not affect the interests of foreign or interstate commerce, or public lands, that the project did not fall within its jurisdiction. The April 3rd order, however, denied the application of the Appalachian Power Company to proceed under a so-called "minor part license"

with the development of the New river in Pulaski county, Virginia. The kind of a license which is granted in the case of developments on "non-navigable" streams would relieve the company from further supervision as to rates, securities, valuation, and so forth, and leave to the commission only very nominal power. The commission based its decision on the fact that the New river is the principal tributary of the Kanawha river which is used in interstate and foreign commerce, and which in turn is one of the chief tributaries of the Ohio river. The commission said, however, that the ultimate determination of whether rivers are navigable or non-navigable must be left to the courts, and that its own decision on that point would not bind the courts. The power company was tendered a standard form license. *Re Appalachian Electric Power Co. (Fed. Pwr. Com.) Project No. 739.*

The New York Commission Cuts Utica Electric Rates

FOLLOWING an electric investigation, the New York commission has ordered a reduction of electric rates in Utica and surrounding territory. The memorandum was written by Commissioner Neal Brewster who heard the case, and conferred in by Commissioner Burritt. Chairman Maltbie and Commissioner Van Namee filed separate reports but both concurred in the final result. The majority report fixed the company's fair value of property useful in public service as of December 31, 1928, at $19,789,267, of which $13,810,978 was allocated to the Utica rate district. The rate base was made up of the physical value of $18,776,534, working capital of $572,733, and going concern value of $500,000. The company had claimed a total rate value of $28,381,423. The difference was made up by the reduction in a valuation of physical property, a cut in the claimed value of water rights, and a ruling that one third of a steam plant known as the Harbor Point plant was not useful in public service. Working capital and going concern value were also reduced, while depreciation allowance was increased. The majority report allowed a return of 7 per cent. Commissioner Van Namee disagreed with the 7 per cent return and stated that 8 per cent might well have been allowed as claimed by the company, but that at least 7½ per cent should have been allowed in order to attract capital. Chairman Maltbie, on the other hand, stated that 7 per cent was the most that should be allowed, and that the amount of the reduction in the rates of the utility was the very minimum that should be made. *Re Utica Gas & Electric Co. (N. Y.) Case No. 5070.*

Composite Allowance for Depreciation and Depletion

THE Indiana commission has approved the petition of the Rushville Natural Gas Company and the Central Fuel Company, both serving natural gas in Rushville, for authority to increase rates. The new rates are calculated to yield a return of approximately 7 per cent on the fair value of both utility properties. In dealing with the property appraisal of the Rushville Natural Gas Company, the commission decided that an allowance of 6.75 per cent of the book value of the property and plant was too high for depreciation, and too low for depletion, but reasonable as an allowance for a composite figure for both depreciation and depletion. The commission in this case also received in evidence a petition signed by several hundred citizens against the

proposed rate increase. The commission stated, however, that it was fully aware that such cases must be decided according to evidence, and not upon the basis of such a petition by the citizens. *Re Rushville Natural Gas Co. et al. (Ind.) Causes 10172, 10173, 10294, 10295.*

The Leasing of Privately Owned Waterworks Not Yet Constructed Is Refused

A PETITION of the Kouts Water Company for approval by the Indiana commission of a lease of waterworks, which it proposed to build, to the town of Kouts under the terms of a contract for which there had been no competitive bidding was denied. The commission pointed out that the cost of the proposed construction was not sufficiently ascertained, and that there was doubt as to the desire of the majority of the residents for the waterworks service, and their ability to pay taxes for the same. Another petition of the same company for authority to issue securities to finance the construction of the proposed waterworks was denied, in view of the fact that the petitioning corporation was not a utility and had not been so declared by the commission; and further that it was not serving the public and that it was not prepared to do so at the time of the filing of the petition by the company. *Re Kouts Water Co. Inc. (Ind.) Nos. 10135, 10136.*

Washington Gas Companies Must Segregate Merchandising Accounts

THE District of Columbia Public Utilities Commission, after a study of the methods employed for accounting of the purchase, sale, and installation of appliances and other merchandise by gas companies under the Uniform Classification of Accounts, previously adopted by District commission upon recommendation of the National Association of Railroad and Utilities Commissioners, has determined that the cost of handling, displaying, and marketing such commodities should not be borne by the consumers as a whole, nor taken into consideration in arriving at any rate base. Such companies were accordingly ordered by the commission to keep merchandising accounts absolutely separate and apart from any operating revenue or expense or other accounts that might be used in rate-making proceedings. *Re Accounting For Gas Companies (D. C.) P. U. C. No. 1005/2, Order No. 900.*

Present Fair Value Is Used As a Basis for Authorizing Telephone Securities

THE Nebraska commission has modified the application of the Nebraska Continental Telephone Company for authority to issue $411,400 aggregate par value of common stock so that the company will be permitted to issue only $310,000 par value of such stock. The commission used present fair value rather than book value as a basis for authority to issue the securities. No allowance was made for going concern value in estimating the ap-

praisal value for purposes of issuing securities, but an allowance of $12,000 was made for the purpose of covering working capital. *Re Nebraska Continental Telephone Co.* (*Neb.*) *Application No. 8692.*

A Commission Regulates Telephone Directory Advertising Rates

THE California commission appears to be the only regulatory body to fix advertising rates for telephone directories. Certain changes recently proposed by the Sierra Madre Telephone Company in the rates for its directory advertising, which did not substantially affect the total revenue or rate of return earned by the utility, were approved as uniform, nondiscriminatory, and representative of the best judgment of the management as to proper charges in comparison with other advertising media. The utility was ordered to submit such advertising rates for filing with the commission before each directory issue, upon the theory that such rates automatically terminate with the active life of each issue, which is a separate service. *Re Sierra Madre Telephone & Telegraph Co.* (*Cal.*) *Decision No. 23368, Application No. 16960.*

Other Important Rulings

THE supreme court of Colorado has decided that the public utilities commission of that state has no constitutional authority to impose sentences for contempt of its orders. *People v. Swena,* (*Colo. Sup. Ct.*) *No. 12562, 296 Pac. 271.*

A statutory provision requiring the Ohio commission to allow a motor carrier sixty days in which to provide necessary service before granting a rival certificate was held not to apply to certificates for irregular motor carrier service. *Lillich v. Public Utilities Commission* (*Ohio St.*) *No. 22517, 174 N. E. 740.*

Notwithstanding a convincing demonstration of the fact that it was both feasible and practicable to produce a solid smokeless fuel for domestic and commercial use from the enormous bituminous coal resources of the state, authority was given by the Utah commission to a natural gas utility to serve eight cities therein where there appeared to be no positive assurance that any plant for the conversion of such coal for fuel, gas, oil, and other products, would be constructed within the state in the near future. *Re Denning et al.* (*Utah*) *Case No. 1184.*

The South Dakota commission has denied a petition of three motor carriers to establish joint through rates in competition with existing short line rail rates, in view of a statute directing the commission, in fixing motor carrier rates, to avoid as far as possible detrimental and unreasonable competition with existing railroad service. *Re Rude & Thompson et al.* (*S. D.*) *Report 140-A, 2028-A, 3036-A.*

A petition of the city of Racine for the elimination of a hazardous grade crossing was held to confer proper jurisdiction upon the Wisconsin commission, even though the crossing was not located within the corporate limits of Racine, but where the city would derive a greater benefit from the improvement in the township in which it was in fact located, and where the city had voluntarily consented to bear whatever share of the cost the commission might rea-

sonably apportion to it. *Re Racine (Wis.) R-3912.*

The Maine commission, in dismissing for lack of jurisdiction an application of a telephone association to abandon service, ruled that a so-called mutual telephone association which does not "own, control, operate, or manage a telephone line for compensation within the state" is not a "telephone company" within the meaning of a statute defining public utilities which are subject to the jurisdiction of the commission, regardless of the fact that it may have voluntarily submitted thereunto by filing annual reports and other statements. *Foxcroft & Sebec Telephone Co. v. Itself (Me.) U. No. 1189.*

The Indiana commission having established a rule defining one year as a "temporary period" within the meaning of a statute permitting utilities in that state to use funds for additions or betterments for a "temporary period" decided that it still had authority to alter, amend, or extend such rule in a specific case, where such action appeared to be in the interest of the public. Permission was accordingly granted to the city of Richmond to invest certain funds from the depreciation reserve of its power plant in the making of certain improvements and additions for a period not to exceed five years. *Re Richmond (Ind.) No. 10409.*

The Fountain Telephone Corporation has been refused permission by the Indiana commission to discontinue free service between various exchanges connecting with its exchange at Covington, Indiana, in view of the fact that this system has been built up on the basis of such free interexchange, and that recent rate increases had been secured upon the assumption that the company would continue the free interexchange arrangement. The commission also pointed out that the proposed toll of 5 cents per call would not perceptibly increase the revenue. *Re Fountain Telephone Corp. (Ind.) No. 10330.*

The daily transportation by bus of school children by a common carrier under contract with public school boards was held by the Pennsylvania commission to be a public service subject to the jurisdiction of the commission. The commission stated that a carrier using the same vehicles in carriage under contract as in general public carriage is a common carrier with respect to both, especially where the contract operations are general and extensive in their nature. *Re Philadelphia Rural Transit Co. (Pa.) Application Docket No. 8527, Folder Nos. 45–49.*

The Missouri commission, in sustaining complaints against the service of the Central Missouri Telephone Company at its Rayville exchange, held that the raising of the question of lawful ownership of certain telephone lines by the utility, which had asserted ownership over such lines and had used them and charged the public for service over them, is no defense to a complaint against the failure to provide adequate service, in the absence of proof as to the really responsible owner of the lines. The commission said that it was not within its province to determine the ownership of the lines. *Public Service Commission v. Central Missouri Telephone Co. (Mo.) Case No. 7416.*

The Standard Slag Company, of Youngstown, Ohio, a private corporation not a common carrier and operating over its own tracks, which were entirely withdrawn from the service of the Pennsylvania Railroad Company, was held not subject to the jurisdiction of the commission to the extent that would warrant an order requiring such company to comply with the full crew law of the state. *Re Standard Slag Co. (Ohio) No. 6939.*

NOTE.—The cases above referred to will be published in full or abstracted in *Public Utilities Reports.*

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

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Points of Special Interest

Titles and Index

TITLES

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DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION

Re Reduced Fares for School Children

[Formal Case No. 221, Order No. 898.]

Rates — Street railway — Pupils' fares.

Street railway and bus companies operating within the District of Columbia were ordered to sell to pupils attending public, private, and parochial schools, booklets containing either ten or forty tickets costing 3 cents per ticket and valid, after being duly signed by the principal of the school attended, for passage between the hours of 7:30 A. M. and 7 o'clock P. M. for day students, and between 4:30 and 11 o'clock P. M. for night students on all school days.

[March 3, 1931.]

GENERAL *order by the Commission regarding the fare to be charged by transportation companies for school children.*

By the COMMISSION: On and after the 10th of March, 1931, school children under eighteen years of age, going to and from school, will be carried on street cars and busses under the conditions set forth in the following rules and regulations:

(1) Tickets will be sold at the rate of 3 cents each and those valid on street cars and on busses operated by street railway companies, in books containing either ten or forty tickets.

(2) No tickets will be sold except upon presentation of an application duly filled out, which will set forth the name of the child, the name or other designation of the school attended, and the child's age. These applications must be signed by a teacher of the school attended and must be dated. There will also be indicated the number of tickets purchased on each application, and the application will be surrendered when the purchase is completed.

(3) These reduced fare tickets may be used by children attending the public free schools in the District of Columbia, and by those attending other schools whose courses of instruction are similar to the ones given in the public schools.

(4) These tickets will be valid for passage on street cars and on busses where the lowest adult fare does not exceed 10 cents.

(5) Each motor bus line, except those owned and operated by a street railway company, will have a distinctive ticket good only on the said bus line.

(6) Tickets good on the street cars will be valid on any street car and on busses operated by a street railway company. (See No. 4 above.)

(7) Reduced fare tickets valid under rule (6) will show on the cover the user's name, age, sex, and will be attested by the principal or a teacher of the school attended.

(8) Free transfers will be issued on reduced fare wherever transfers are issued on adult fares, between street cars and between street cars and busses operated by the street railway companies (see No. 4 above) and vice versa. Free transfers will also be issued on reduced fare between the Capital Traction line and the Washington Rapid Transit line at Colorado avenue and 14th street. Such transfers will be accepted only at transfer points now or hereafter designated. Between transportation systems where there are now no transfer arrangements, no transfers will be issued.

(9) These reduced fares will be good only when going to and from school and for day schools between the hours of 7:30 o'clock, A. M., and 7 o'clock, P. M., on school days. Special tickets will be provided to be used by pupils of night schools and will be good between the hours of 4:30 o'clock, P. M., and 11 o'clock, P. M. These reduced fare tickets will not be good on Saturdays, Sundays, or holidays.

(10) At private and parochial or other denominational schools, the tickets will be sold by the authorities at each school to its pupils, but each such sale must be evidenced by an application duly filled out (see No. 2).

(11) The street railway and bus companies will arrange for the sale to pupils other than those covered by rule (10) in such a manner and at such places as will be convenient for the purchasers.

(12) A list of the places where such tickets may be procured will be furnished to each of the schools throughout the city and as nearly as possible will be kept up-to-date.

(13) If any street railway or bus company fails to make the reduced fare tickets thus available so that they may be used by the 10th of March, 1931, then and until such tickets are made available, the company at fault is hereby required to transport as above any school child under eighteen years of age, going to or from school upon the payment of 3 cents cash fare.

(14) Except as provided in rule (13) cash fares will not be accepted for transportation at the reduced rate.

MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Re Worcester Gas Light Company

[D. P. U. 3883.]

Consolidation — Objections — Amortization obligations — Compensating economies.

1. A consolidation of two gas properties was approved notwithstanding the contention that customers of one of the companies might be burdened by amortization obligations assumed by the other company for abandoned property, where this disadvantage was offset to some extent by the excess

capacity of the other company's plant, and where the mutual economies accruing from such consolidation promised to outweigh both such disadvantages, p. 340.

Consolidation — Advantage over physical connection — Gas.

2. A consolidation of two gas properties was approved notwithstanding the contention that all of the economies that would be achieved by such consolidation could be just as well effected by physical connection and joint operation, where it appeared that corporate consolidation would produce additional economies in management and accounting, in the elimination of intercorporate dealings and in the more effective use of employees' services and plant equipment, p. 340.

Consolidation — Reasons for denying — Wholesale rate — Territorial developments.

3. Authority was refused for the consolidation of two gas properties where it appeared that it was in public interest for one of the companies which only distributed a purchased supply to be in a free position to secure the most favorable wholesale rate available, and where territorial trends seemed to indicate that such company might be more economically merged into a different system, p. 342.

[February 26, 1931.]

PETITION *of one gas utility for authority to purchase properties of two other gas companies and to issue securities; consolidation approved as to one company and denied as to the other, and security issue approved.*

By the DEPARTMENT: An agreement was entered into between the Worcester Gas Light Company, the West Boston Gas Company, and the Dedham and Hyde Park Gas and Electric Company, approved by the affirmative vote of the holders of more than two thirds of all the outstanding shares of each of said companies, whereby the Worcester Company agreed to issue 20,000 shares of preferred stock of that company in exchange for all the property of the West Boston Gas Company and of the Dedham and Hyde Park Company; 15,000 of the said 20,000 shares to be issued in exchange for the property of the West Boston Company and 5,000 thereof in exchange for the property of the Dedham and Hyde Park Company. The Department was asked by the petition to determine that the facilities for furnishing gas would not be diminished by the consolidation contemplated by the agreement, and to approve such consolidation as consistent with the public interest.

At the hearing it appeared that in the gas plant of the Worcester Company at Worcester, water gas only is manufactured. This is from a new plant built in 1929. In the West Boston Company's plant at Framingham coal gas is produced, supplemented at times from a water gas plant. The coal gas plant in Framingham is a modern coke oven plant, known as a "Koppers" plant, so arranged that additional units may be added at a minimum of expense, and as such addi-

tions are made the overhead and labor costs per thousand cubic feet of gas should be reduced as the output of gas from the plant is increased. The capacity of the water gas plant in Worcester cannot be so readily or so economically increased. Thus, if the two plants were merged into one system, under one company, and proper connections made between them, it undoubtedly would be more economical to increase the capacity of the coke oven plant in Framingham, rather than the capacity of the water gas plant in Worcester to take care of additional requirements, provided the coke made in the coal plant could be marketed. Moreover, by combining the two plants into one system, the standby plant at Worcester and the standby plant at Framingham could be used alternately or together in the event of any breakdown or interruption in the manufacture of gas at Worcester or at Framingham.

We believe that, if the two plants were physically connected, advantages would result not only in operation but in reducing the amount of investment necessary in the future.

It also appeared at the hearing that the New England Gas and Electric Association, a voluntary association or trust, owns all the capital stock of the Worcester Company, 91,817 of the 92,000 shares of the West Boston Company, and 19,644 of the 20,000 shares of the Dedham and Hyde Park Company.

[1, 2] Objection was made at the hearing to the consolidation. It was urged that by reason of the ownership of the stock of the three companies by the New England Gas and Electric Association, all the economies that could be achieved by a consolidation could be effected by a physical connection of the three systems and the operation of the two plants in combination. It was also contended that a consolidation was likely to throw a burden upon the consumers of the West Boston and Dedham and Hyde Park Companies for the reason that the Worcester Company, in 1929, abandoned property to the amount of $913,333, and that the company is in the process of amortizing this at the rate of $60,892 a year, which means a program of charging this amount annually to expenses for a period of twelve years. It was claimed that thus, if the consolidation be permitted, the consumers of the West Boston Company and of the Dedham and Hyde Park Company would be called upon to contribute to this amortization. On the other hand, it was contended that the consumers of the area now supplied by the Worcester Company might be called upon to assume burdens of the consumers in the area now supplied by the West Boston Company and the Dedham and Hyde Park Company which ought to be carried by the consumers in those areas. The rates in the West Boston territory are high, due largely to that company having been obliged, in recent years, to increase its capacity to supply itself and the Marlboro-Hudson Gas Company, which it was bound under a contract to supply. The then management elected to build a coke oven plant, rather than to enlarge its water gas plant. That management installed what it believed to be the smallest coal plant that could be economically operated. Nevertheless the capacity of this plant was much larg-

er than the requirements of both the West Boston Company and the Marlboro-Hudson Company. Consequently, a contract was made to supply the Dedham and Hyde Park Company. This involved the construction of a pipe line to Dedham. Notwithstanding this arrangement there still remained a large excess of capacity in the plant. The investment cost of the plant and pipe line increased the interest and dividend requirements of the company to such an extent that it put the company in serious difficulties.

We agree that the consumers of the Worcester Company ought not to be called upon to assume burdens as to which they are in no way involved. Neither should the consumers in the present area of the West Boston Company be called upon to assume burdens that properly should be borne by the consumers in the present area of the Worcester Company. By increasing the output of the West Boston plant, and thereby reducing the overhead cost, no burden will be thrown upon the consumers of the Worcester Company, provided the gas is delivered at Worcester at a price as low as it can be manufactured in the plant located there. On the other hand, by increasing the capacity of the West Boston plant the consumers in the West Boston area will be benefited by the reduced overhead in the manufacture of gas. We have no doubt that economies should result in the utilization of the two plants together. It ought, as we have pointed out before, to effect a substantial saving in the capital expenditures that otherwise would be called for in the future. Gas companies have for some time been confronted with the problem of increasing their output without increasing their capital investment to an extent which wipes out all the gain of the increased output. Their business is largely confined to the sale of gas for domestic use in cooking and heating and to its use in industry. To increase this use gas companies must make every endeavor to sell it at a price that is attractive. To accomplish this it is highly important to keep the capital investment as low as is possible.

We think it true that there is now no serious difficulty in the physical connection of the systems of the three companies and the combining of the operation of the Worcester and West Boston plants without a consolidation of the companies. This, however, would require the sale of gas from the one to the other, and the metering of such gas so sold, and probably would require separate organizations in the operation of the two plants. Moreover, it might cause embarrassment to the West Boston Company if the price charged the Worcester Company varied materially from that charged the Marlboro-Hudson Company or other companies.

The problem, as we view it, is whether sufficient saving will be effected in operation by the consolidation to offset the disadvantages which may arise. As we have pointed out, the two plants can be operated in combination without the consolidation of the two companies. The advantages which would be derived from the consolidation are (1) a consolidation of management and accounting; (2) the elimination of intercorporate dealings, thus making employees' services di-

rectly available throughout the field of operation; and (3) a more effective use of the gas plant of the West Boston Company at Framingham with that of Worcester, together with the utilization of the standby plants at the two places for the consolidated area.

It is proposed by the plan to issue 15,000 shares of the preferred stock of the Worcester Company for the property of the West Boston Company. This would effect a reduction of capital of $800,000 and thus would be a further distinct advantage.

We are of the opinion that satisfactory economies can and should be effected by the consolidation of the Worcester Gas Light Company and the West Boston Gas Company and that the advantages gained by such a consolidation would outweigh the disadvantages. While the economies that should be effected cannot now be accurately measured in dollars and cents, nevertheless we believe that they would be real and substantial, particularly in operation of the plants in combination under a single management. The disadvantages would be the increased difficulty in adjusting the rates equitably, so that increased burdens would not be thrown upon the customer in the present area of one company for the benefit of those in the area of the other, and the necessity of considering the rate structure in the whole area of the combined companies when dealing with the rates applicable in any part of the combined area. This difficulty we do not regard as serious in the particular area, under the conditions involved, and in any event, not so serious as to warrant us in declining our approval of the consolidation of the Worcester Company and the West Boston Company.

[3] As to the consolidation of the Dedham and Hyde Park Company, we do not feel that the advantages are such as to warrant our approval. The Dedham and Hyde Park Company manufactures no gas. It purchases its requirements from the West Boston Company. It formerly obtained its gas from the Boston Consolidated Gas Company. Its position is such that it ought to receive its gas from the West Boston Company on as favorable terms as it could obtain gas from the Boston Consolidated Company. The time is not far distant when it may be of distinct advantage to its customers and in the public interest for it, or at least that part of its system that serves Hyde Park, to be consolidated with the Boston Consolidated Gas Company. Our experience has led us to believe that it gives better satisfaction to consumers, and that it is usually in the public interest, if the people in the same municipality are served by the same public utility company. If the Dedham and Hyde Park Company were consolidated with the Worcester Company, greater difficulties might arise in the future in the taking over of the Hyde Park area by the Boston Consolidated Gas Company, if that should prove desirable. The only saving that would result to the Dedham and Hyde Park Company and to its customers by its consolidation with the Worcester Company would be that of centralized management in the maintenance of its system, in the distribution of the gas and in the collection of its accounts. This saving is not such as to warrant

the consolidation of the company with the Worcester Company at this time.

We notified the companies that we were unwilling to approve of the consolidation of the Dedham and Hyde Park Company with the Worcester Company and they have taken the requisite legal action to change their agreement and the petition accordingly.

Accordingly, after notice and public hearing, it appearing that the terms of the consolidation of the Worcester Gas Light Company and the West Boston Gas Company have been duly approved by two thirds of the stockholders of each company, the Department of Public Utilities hereby

Determines that the facilities for furnishing and distributing gas will not by reason of such consolidation of the Worcester Gas Light Company and the West Boston Gas Company be diminished and that said purchase and sale or consolidation of said two companies and the terms thereof, as set forth in said petition as amended and in the agreement thereto annexed, as amended, are consistent with the public interest; and

After notice and public hearing, it being deemed by the Department that the issue of 15,000 shares of the preferred stock of the Worcester Gas Light Company of the par value of $100 a share, and entitled to cumulative preferred dividends of 6 per cent per annum, is reasonably necessary for the purpose for which such stock is authorized,—it is

Ordered, That the Department hereby approves of the issue by the Worcester Gas Light Company, in conformity with all the provisions of law relating thereto, of 15,000 shares of preferred stock, entitled to cumulative preferred dividends of $6 a share per annum, of the par value of $100 a share, and subject to the terms and conditions as set forth in the petition as amended; said shares to be issued for the sole purpose of acquiring all the property of the West Boston Gas Company.

NEW YORK DEPARTMENT OF PUBLIC SERVICE
STATE DIVISION, PUBLIC SERVICE COMMISSION

Re Niagara Hudson Power Corporation

[Case No. 6417.]

Consolidation — Excessive purchase price — Territorial merger.

A proposal by a holding company, controlling a gas company serving a large city, to purchase the stock of a smaller gas company serving a suburb of such city with a view to merging the two properties at a later time, was denied where the price to be paid for the suburban company's stock was more than four times the net value of the shares, and where there was a probability that the holding company would later attempt to make

its subsidiary serving the city buy the suburban company's stock at the same excessive price which the parent would have paid for it.

[February 9, 1931.]

PETITION *of a holding company for authority to purchase outstanding capital shares of a gas company; denied.*

APPEARANCES: Earle J. Machold, and Truman R. Hawley, Attorneys for Niagara Hudson Power Corporation; Stefaan Piek, Vice President, Niagara Hudson Power Corporation; E. L. White, Vice President, Syracuse Suburban Gas Company, Inc.; Charles M. Gilson, Mayor, Village of East Syracuse; Harold S. Adcock, Attorney, Village of East Syracuse; Charles Ray, interested citizen.

BREWSTER, Commissioner: Syracuse Suburban Gas Company, Inc., was organized under the laws of the state of New York in January, 1913. It has issued and outstanding 340 shares of capital stock, par value $100 per share of which Eugene L. White of Ocean City, New Jersey, is the owner of 120 shares, Orrie Evans of East Syracuse, the owner of 100 shares, and Carver, the owner of 120 shares. There is a mortgage of $40,000 given in 1921 against which bonds have been issued in the full amount and which became due November 10, 1931. Mr. White has an option upon the stock of Mr. Evans and Mr. Carver and has entered into an agreement with the Niagara Hudson Power Corporation to sell and deliver all of the capital stock of the par value of $34,000 for 10,000 shares of the capital stock of the Niagara Hudson Power Corporation, of the par value of $10. The petition herein is by Niagara Hudson Power Corporation, under § 70 of the Public Service Commission Law for permission to acquire this stock of Syracuse Suburban Gas Company, Inc.

Syracuse Suburban Gas Company, Inc., has the general gas distribution business in the village of East Syracuse, a part of the town of Dewitt, and the part of the city of Syracuse formerly known as Eastwood. No other company distributes gas in this territory. The territory served by the Syracuse Suburban Gas Company, Inc., is contiguous to the territory now served by the Syracuse Lighting Company, a subsidiary of the Niagara Hudson Power Corporation. Syracuse Suburban Gas Company, Inc., has no gas manufacturing plant and now purchases its entire requirements from the Syracuse Lighting Company. It has approximately 700 consumers.

Niagara Hudson Power Corporation is a holding company, organized under the laws of the state of New York. It is the intention of the purchaser to operate the company, for the time being, under its present corporate status and to extend the service mains into that portion of the territory outside of the village of East Syracuse where the Syracuse Suburban Gas Company, Inc., has a franchise to serve and where customers may be acquired. The territory of the Syracuse Suburban and the Syracuse Lighting Company, a subsidiary of

Niagara Hudson Power Corporation, adjoin each other in the former village of Eastwood, now part of the city of Syracuse. To the north of the village of East Syracuse is a rapidly growing territory which now has no gas service although the Syracuse Suburban Company has a franchise to serve. It is estimated that at least 300 customers can be added by extending the mains at an estimated cost of $20,000. The average consumption by the customers of the Syracuse Suburban Gas Company, Inc., is at present about 20,000 cubic feet, and the average consumption of the Syracuse Lighting Company's customers is 30,000 cubic feet. The prospective purchaser believes by increased efficiency, better service to its customers, and the sale of gas appliances, which the Syracuse Suburban Company is unable, financially, to carry, that the average consumption can be increased to 30,000 feet. If the present customers can be increased by 300, with an average use per customer of 30,000 cubic feet per annum, it would mean 9,000,000 cubic feet per year and if the present 700 customers could be increased from 20,000 to 30,000 cubic feet per annum, it would mean a further increase of 7,000,000 cubic feet, or a total of 16,000,000 cubic feet per annum.

After the property has been developed and the extensions made, it is the intention to merge this property with the Syracuse Lighting Company. The petitioner states that the proposed purchase would be in the public interest for the following reasons: The purchase will make available to the Syracuse Suburban Gas Company, Inc., consumers the technical and management staff of the Syracuse Lighting Company. At present the Syracuse Suburban is without trained operating officials. The acquisition by the petitioner would permit of considerable saving in operating expense as well as better service. The Syracuse Lighting Company now serves electricity in the territory served by the gas company. It has a man engaged in reading meters in East Syracuse and other portions of the territory and this same man can read the gas meters while reading the electric meters. The Syracuse Lighting Company has an efficient complaint department and renders 24-hour emergency service, whereas the Syracuse Suburban Company has no emergency service at night. In case of emergency, it is necessary to call the president of the company, who is a lawyer, at his residence and have him get in touch with the one outside man employed by the company. If these can not be found on the telephone, the complaint has to wait. The emergency service of the Syracuse Lighting Company could attend to complaints. Their men could set up gas as well as electric meters, connect appliances, and do the other necessary work of connecting and repairing gas as well as electric service without a duplication of expense. The billing could be done in the same office for both services, saving office expense and considerable bookkeeping expense. The Syracuse Suburban Gas Company has no equipment with which to make extensions of service. The Syracuse Lighting Company maintains a complete equipment for this work, including trenching machines. At the present time meters of the Syracuse Sub-

urban Company are read by a part time man at 4 cents per meter. Practically all of this expense could be saved, it is stated, by using the man reading electric meters for the Syracuse Lighting Company in the territory and the expense would be very small. The Syracuse Suburban has no meter repair shop and now sends its meters to Albany for repairs. The Syracuse Lighting Company maintains a repair shop.

Mr. White, vice president of the Syracuse Suburban Company, testified that at the time the present mortgage of $40,000 was placed on the property in 1921, some of the bonds were sold as low as 85, although they are 8 per cent bonds. This mortgage is due in November, 1931, and he stated that the company would have difficulty in refunding because the issue is so small as not to be of interest to bankers, unless sold much below par. He further stated that the company was unable to finance the required extensions to the property; that with a small company it was not possible to secure funds from bankers to make these extensions until sufficient customers were in sight to pay as soon as completed and that he, individually, was not in a position to finance the extensions; that there were a large number of people in the territory adjoining the village of East Syracuse who desired service, but that the company was unable to render it. He further testified that there were several industrial concerns, including the Oberdorfer Brass factory and Benedict Manufacturing Company, in the territory, who could and would use gas for heat treatment if it could be sold at an attractive price. The present industrial rate is 85 cents over 1,000,000 cubic feet and 65 cents over 2,000,000 cubic feet. The present residential rate is $2.25, with a discount of 10 per cent if paid within ten days, minimum charge 75 cents. The present rate of the Syracuse Lighting Company is $1.13 for residential consumers and the industrial rate is as low as 55 cents for large usage.

The Value of Property to Be Transferred

The following schedule shows the book balances as of September 30, 1930, adjustments by the Accounting and Engineering Departments of the Commission, and the final corrected balances after adjustments, as of September 30, 1930.

Assets side	Book balances at September 30, 1930	Accounting Division [1]	Engineering Division [1]	Final corrected balances at September 30, 1931
Fixed capital—gas	$85,460.05	*$406.55*	*$1,132.51*	$83,920.99
Cash	564.02	.....	.....	564.02
Accounts receivable	9,678.59	*421.98*	.....	9,256.61
Materials and supplies	5,339.84	.....	*3,783.31*	1,556.53
Unamortized debt discount and expense	697.73	.....	.....	697.73
Miscellaneous suspense (suspense to be amortized)	14,000.00	.....	.....	14,000.00
Total assets	$115,740.23	*$828.53*	*$4,915.82*	$109,995.88

[1] Italics denote credits on the assets side and debits on the liabilities side.

Liabilities side	Book balances at September 30, 1930	Accounting Division [1]	Engineering Division [1]	Final corrected balances at September 30, 1931
Common capital stock	$34,000.00	.....	.....	$34,000.00
Long term debt	40,000.00	.....	.....	40,000.00
Notes payable	14,120.00	.....	.....	14,120.00
Accounts payable	2,142.64	.....	.....	2,142.64
Prepaid consumers	280.51	*$280.51*	.....	.....
Consumers' deposits	751.52	.....	.....	751.52
Retirement reserve	18,381.43	*299.00*	$9,574.57	27,657.00
Miscellaneous unadjusted credits	1,006.74	.....	.....	1,006.74
Profit and loss—surplus	5,057.39	*249.02*	*14,490.39*	*9,682.02*
Total liabilities	$115,740.23	*$828.53*	*$4,915.82*	$109,995.88

[1] Italics denote credits on the assets side and debits on the liabilities side.

Under the terms of the contract entered into for the sale of the stock, the notes payable, appearing in the balance sheet as $14,120, and which at the time of the hearing amounted to $13,420, are to be paid by Mr. White prior to the close of the transaction. Therefore, this should be taken out of the liabilities in computing the net worth of the property when turned over to the Niagara Hudson. There is a further adjustment which should be made to arrive at the net value of the 340 shares of the common capital stock. An examination of the books and property has been made by the engineering and accounting divisions, and the foregoing schedule reflects the adjustments to be made in accordance with their findings after examination. The item of $14,000 suspense to be amortized is not an asset but the remainder of the suspense item consisting of accrued interest on indebtedness due by the company and accumulated losses occurring many years ago. Adjusting these two items in the balance sheet leaves a net value for the 340 shares of common stock of $23,737.98.

The income statement of the Syracuse Suburban Gas Company, Inc., for the twelve months ending December 31, 1929, is as follows:

Syracuse Suburban Gas Company, Inc.

Income Statement—Twelve months ended December 31, 1929

Operating revenues		$37,799.86
Operating expenses including taxes		24,435.37
Gross corporate income		$13,364.49
Deductions from gross corporate income:		
Interest on long term debt	$3,200.00	
Miscellaneous interest deductions	475.50	
Amortization of debt discount and expense	418.68	
Miscellaneous amortization chargeable to income*	3,500.00	
Miscellaneous deductions from gross corporate income	37.74	
		7,631.92
Net income		$5,732.57

*See Case No. 1798.

Discussion

The city of Syracuse is growing very rapidly. It has recently taken in a part of the territory served by the Syracuse Suburban Company and its borders extend practically to the village of East Syracuse. There is a territory outside of the village of East Syracuse and the city of Syracuse

which is building up at the present time and that building would increase more rapidly if gas service were supplied. It is impossible for the Syracuse Lighting Company to expend in that section while the Syracuse Suburban Gas Company continues to operate. The territory logically belongs to and would be best served by the Syracuse Lighting Company. The service now rendered is not first class and the rate charge is prohibitive of general enjoyment of the labor-saving gas burning devices which the public should enjoy the use of. No extensions of service mains or substantial increase in the use of gas burning appliances seem possible under the present management. The present management admits that it would have serious difficulty in refunding its present bond issue of $40,000 which comes due November, 1931.

If the company is acquired by the Niagara Hudson Power Corporation, the interest charged on this $40,000 after November next would be reduced at least 2 per cent or $800. Substantial savings would also be made in operation which, if added to the present income, should permit a substantial reduction in the rate.

The purchase price is in our judgment excessive, being at the present market value of the 10,000 shares of Niagara Hudson Power Corporation's common stock, more than four times the net value of the 340 shares of the common stock of the Syracuse Suburban Gas Company, Inc., outstanding, and considerably more than any possible rate base which can be arrived at on the evidence presented.

The fixed capital on the books, as adjusted by the accounting and engineering divisions is	$83,920.99
The gross corporate income for the year ending December 31, 1929 was	$13,364.49
From the fixed capital of	$83,920.99
Should be deducted the depreciation as reported by the engineering division of	27,657.00
This would leave a depreciated fixed capital as shown by the books of	$56,263.99
To this should be added an allowance for working capital, which for present purposes, we will estimate at	5,000.00
	$61,263.99

The only overhead shown by the books is $3,000 for organization expense.

Allowing for any overheads that could be established the return of $13,364.49 on any possible rate base appears to be excessive.

After the program of extension of the service mains of the Syracuse Suburban Gas Company, Inc., is carried out, it is proposed to merge this company with the Syracuse Lighting Company, Inc. If the transaction now asked is approved and the property merged with the Syracuse Lighting Company, Inc., the Niagara Hudson Power Corporation could and probably would request that the property be taken over at the amount paid by the Niagara Hudson. It is desirable that the properties be consolidated; but at the purchase price asked, the burden on the consumers more than offsets the benefit to be gained.

If the Niagara Hudson Power Corporation should determine that the acquisition is sufficiently desirable to the holding company to warrant its writing off all, or a very considerable portion, of the difference between the purchase price and the net value of the

assets acquired so that when the property is merged with the Syracuse Lighting Company it would go into that company at approximately its net value, the Commission would give such a proposal serious consideration.

This Commission will not attempt by regulation to usurp the functions of the officers and directors of the several companies in the management of their business affairs, but it is charged by statute with the duty of determining that these transfers of stock are in the public interest before granting approval. The transfer proposed is not in the public interest for the reasons stated, and an order denying the petition should issue.

Chairman Maltbie and Commissioners Van Namee and Burritt concur; Commissioner Lunn not present.

ILLINOIS COMMERCE COMMISSION

Anton Mathison

v.

Public Service Company of Northern Illinois

[No. 20340.]

Commissions — Jurisdiction — Legal questions — Theft of current.

1. The Commission, upon a complaint of an individual consumer against the discontinuance of service for alleged theft of current, has no jurisdiction to determine whether current was in fact diverted, since this is a question for the courts, p. 353.

Service — Commission jurisdiction — Discontinuance because of alleged theft of current.

2. The Commission will not decide upon what terms service should be resumed, when discontinued because of alleged theft of current, until the question of guilt has been determined by the courts, p. 353.

Service — Discontinuance for alleged theft of current — Commission jurisdiction.

3. The only matter in connection with an alleged theft of electricity denied by a consumer complaining against the consequent discontinuance of service, which the Commission has jurisdiction to determine, is whether the company acted in good faith in discontinuing the service, with an honest belief that the current had been stolen and did or did not interrupt the consumer's service arbitrarily, capriciously, or oppressively, p. 353.

[January 20, 1931.]

COMPLAINT *by an electric consumer against the discontinuance of service; dismissed for lack of jurisdiction.*

By the COMMISSION: On August 28, 1930, Anton Mathison, complainant in the above matter, filed with the Commission a formal complaint alleging in substance that he is the owner of a cottage located at 301 South 11th avenue, Maywood; that he has occupied the said cottage as his residence since the year 1920; that electric service was being furnished to the said cottage, when he acquired it, by the Public Service Company of Northern Illinois, respondent in this proceeding, and that the said Public Service Company of Northern Illinois continued to render such service to the complainant until January, 1929, when, as a result of occurrences hereinafter set forth more fully, service was discontinued and that while service was subsequently restored for a brief period it was again discontinued and that the respondent has since refused to furnish further service to the complainant. The prayer of the complaint is that the respondent may be required to answer the charges herein and that upon final hearing the Commission will make such order in the premises as may seem meet.

The Public Service Company of Northern Illinois filed its answer on September 6, 1930. The said answer, after admitting that the respondent is a public utility engaged in rendering electric service in and about the village of Maywood and subject to jurisdiction of this Commission, sets forth a number of matters that are relied upon by the respondent to show that considerably more electricity was supplied to the premises of the complainant than were registered by his house meter and paid for, and that the complainant though requested to do so has never explained the apparent discrepancy between the quantities of electricity apparently sent into his premises and the quantities registered by his house meter and paid for by him.

Pursuant to notice as required by law and by the rules and regulations of the Commission hearings were held on the said complaint at the offices of the Commission in Chicago on October 14, 1930, and on October 28, 1930. At the said hearings the complainant was represented by Charles W. Lamborn, his attorney, and the respondent was represented by Isham, Lincoln and Beale by David F. Taber.

Subsequently certain memoranda of authorities and written statements were filed by the complainant and by the respondent. Upon examination of the record it appeared to the Commission that this case is the first proceeding ever decided by this Commission involving questions of jurisdiction and procedure where there is a controverted question of alleged theft of electric energy or other public utility service by a customer, and for that reason the Commission on its own initiative requested counsel for each of the parties to file, if they cared to do so, formal briefs and arguments upon the matter, particularly dealing with the questions of law and jurisdiction involved. Such a brief and argument was filed by the respondent but not by the complainant.

The complainant gave testimony in his own behalf and certain testimony was also introduced for the complainant by Paul E. Collins, an attorney associated with Mr. Lamborn who represents the complainant. On behalf of the respondent testimony was introduced by a number of employees of

the Public Service Company of Northern Illinois who had participated in the making of investigations and tests about the premises of the complainant and who testified in respect thereto, and also by Mrs. Minnie I. Krefft and Walter K. Radoy, residents of the village of Maywood and who each gave certain testimony in reference to the use of electricity observed by them at the premises of the complainant.

The facts developed by the evidence in the case are substantially as follows: The operating officials of the Public Service Company of Northern Illinois had observed that the amount of electricity registered by the complainant's meter over a considerable period of time was less than they would expect to be consumed normally in such a dwelling house and had given the matter special study. In October, 1928, an employee of the respondent called at the premises of the complainant and observed what he describes as scratches upon the blade of the knife switch on the line side of the complainant's house meter and also scratches upon brass clips on the fuse block on the house side of the same meter. The said employee rendered a report to his superiors in the form of a notation on a meter inspection sheet, copies of which have been placed in evidence, the notation reading "Looks funny from sw. to blocks. Try pole meter." Accordingly a test meter was placed upon a pole outside of the complainant's premises and so connected as to measure all electricity passing into the line leading to the complainant's residence. This meter was tested before being placed in position and was tested again immediately after its removal and found to be registering accurately at both times. The said pole meter was installed on or about October 23, 1928, and readings of that meter, taken at intervals between that date and the date of December 21, 1928, showed that considerable more electricity was passing through the pole meter than was being registered by the meter in the consumer's premises. On or about December 26, 1928, the complainant was given information of the fact that his service was under observation but readings of the pole meter were continued until January 25, 1929. The consumptions registered by the pole meter from the approximate date on which the complainant was apprised of the fact that his service was under observation until the removal of the pole meter on January 25, 1929, were substantially in agreement with the corresponding readings of the meter in the complainant's residence. There followed some correspondence or verbal communications between the parties as to the exact nature of which the evidence is somewhat conflicting but in general the facts seem to be that the complainant was requested to call at the offices of the respondent and explain the discrepancy between the readings of the pole meter and the readings of the house meter, that he failed to do so, and that in January, 1929, service of the respondent was discontinued. It appears that subsequently the service was restored as a result of telephone complaint made by the complainant to certain employees of the respondent but that after service was rendered for a short time, the service was again discontinued, the meter removed from

the complainant's premises and the wire leading from his premises to the transformer on the respondent's pole was also removed. The complainant denies and has at no time admitted that he has been guilty of any practices that would result in the use of the respondent's current by him or any of his household without that current being properly metered and paid for, and the complainant further denies that any such practices have been followed in his premises by any one so far as he knows or can ascertain. The complainant also alleges that in attempting to have his service restored he has been met with the proposition made by representatives of the respondent that it would be necessary for him to admit theft of energy and agree to pay for an estimated quantity of current stolen before service would be restored to him. The respondent takes issue with the accuracy of this statement of its position but nevertheless has refused and still refuses to restore service to the complainant.

The respondent introduced considerable testimony by its employees, to prove the accuracy of the tests that were made by it to show that the meters used in that test were recording properly, the readings correctly taken, and that proper precautions were made at all times to guard against leakage of current through grounds or short circuits either in the house-wiring of the respondent or in the wiring between the house meter and the test meter on the pole. The respondent avers that its employees have been denied access to the premises of the complainant for the purpose of checking the load or ascertaining the number of outlets, appliances, and other means of using electricity. Testimony in respect to his appliances was given by the respondent, and it appears from his testimony that prior to December, 1928, his residence was occupied by the complainant and his wife, there being no other persons in the family; that the wife of the complainant died in December, 1928, and that since that time the complainant has resided alone in his house. While it appears from the testimony of the complainant that he has a considerable number of electric outlets and electric appliances he uses actually very little electricity, seldom, according to his testimony, having more than one light burning at a time and nearly all of his appliances being out of repair and unused. The complainant is a machinist by occupation and has three lathes in his barn, these lathes being driven by a three-quarter horsepower electric motor, but the complainant testifies that they have been in use very seldom during the past several years. If the testimony of the complainant in respect to his use of light and electric appliances is accepted as correct, the quantities of electricity registered by the pole meter during the months of October, November, and December, 1928, would appear excessive.

The respondent by way of rebuttal of the complainant's testimony on the last-mentioned matter introduced the testimony of two neighbors of the complainant who stated that they had observed a considerable use of electric lights in the dwelling house of the complainant, that this use of light extended to late hours of the night, and further that one of the said witnesses

had observed the use of light at night in a chicken coop of the complainant, and another had observed and been disturbed by the noise of an electric motor in the barn of the complainant.

There is considerable contradiction and discrepancy between the statements of the various witnesses in respect to Mr. Mathison's use of electricity. Except for this evidence relating to the pole test, there is doubt, and it is a question of the credibility, or the weight to be given to the testimony, of the various witnesses as to whether the use of electric light and appliances in complainant's premises was such as to be consistent with the registrations of the house meter or whether such use of light and appliances was such as to be consistent with the registrations of the pole meter.

The evidence in respect to the tests made from October, 1928, to January 25, 1929, by means of the pole meter is not open to the same doubt or contradiction, but it appears that these tests were carefully made, that they were made by competent men, the instruments and appliances used in the tests carefully checked, the wiring carefully examined, the connections properly made, and there appears to be no reasonable doubt that during the period from October 23, 1928, to December 21, 1928, a considerable larger quantity of electricity was passing through the meter on the pole, and thence through a wire to the residence of the complainant than was being registered by the meter installed inside of the house of the complainant. Likewise, there is no reasonable doubt that the test correctly disclosed the facts as to delivery of electricity to complainant's premises from the date of December 21, 1928, to the date of January 25, 1929, and that during that period the amount of electricity passing as above through the meter on the pole and thence over a wire into the premises of the complainant was substantially in accord with the registrations of the meter within the complainant's house for the same period. Neither is there reasonable doubt that the complainant became apprised about December 26, 1928, that his use of electricity was being made the subject of investigation and observation by employees of the respondent.

[1–3] Throughout the proceedings the respondent has strongly urged that a complaint filed with the Illinois Commerce Commission against a public utility seeking the restoration of service to a person who the company alleges has, by fraudulently manipulating his facilities, illegally obtained service from the company presents a judicial question beyond the power and jurisdiction of the Illinois Commerce Commission to hear and determine. The complainant contends that while (as complainant suggests) the Commission does not have jurisdiction to fix the amount due for diverted service, in the event it finds that such service has in fact been diverted, or to fix the amount to be paid in damages where it is found that the service was wrongfully discontinued, yet the Commission may and should by its order indicate upon what terms service should be restored and that the service should be restored upon acceptance by the customer of the terms and conditions so stated. Thus the jurisdiction of this Commission, the proce-

dure and the remedy to be granted, if any, are all matters of controversy in this case.

Section 79 of the Commerce Commission Act (An Act Concerning Public Utilities, approved June 29, 1921, and in effect July 1, 1921) reads as follows:

"It is hereby made the duty of the Commission to see that the provisions of the Constitution and statutes of this state affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected, and to this end it may sue in the name of the people of the state."

Section 38 of the said act reads in part as follows:

"Every public utility shall, upon reasonable notice, furnish to all persons who may apply therefor and be reasonably entitled thereto, suitable facilities and service, without discrimination and without delay."

Section 64 of the said act reads in part as follows:

"Complaint may be made by the Commission, of its own motion or by any person or corporation, chamber of commerce, board of trade, or any industrial, commercial, mercantile, agricultural, or manufacturing society, or any body politic or municipal corporation by petition or complaint in writing, setting forth any act or things done or omitted to be done in violation, or claimed to be in violation, of any provision of this act, or of any order or rule of the Commission."

Section 65 of the said act, after providing for hearing upon such complaint states that: "At the conclusion of such hearing the Commission shall make and render findings concerning the subject matter and facts inquired into and enter its order based thereon."

Section 75 of the said act reads in part as follows:

"Whenever the Commission shall be of the opinion that any public utility is failing or omitting or about to fail or omit, to do anything required of it by law, or by any order, decision, rule, regulation, direction, or requirement of the Commission, issued or made under authority of this act, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or any order, decision, rule, regulation, direction, or requirement of the Commission, issued or made under authority of this act, the Commission shall commence an action or proceeding in the circuit or superior court or in any other court of concurrent jurisdiction in and for the county in which the case or some part thereof arose, or in which the person or corporation complained of, if any, has its principal place of business, or in which the person complained of, if any, resides, in the name of the people of the state of Illinois, for the purpose of having such violation or threatened violation stopped and prevented, either by mandamus or injunction."

While § 75 apparently authorizes the Commission to proceed to enforce compliance with the statutes, as well as enforcing an order of the Commission, nevertheless in the case of Simpson v. Ruyle, P.U.R.1924D, 160, 161,

the Commission held, in effect that, at least in complaint cases, such action must be preceded by a hearing, findings, and order under § 65. In that case it was said:

"To form an opinion that will justify court action (under § 75) the Commission must necessarily conduct some kind of an investigation. A complaint filed by a person or corporation alleging that another person or corporation is violating the law, is not sufficient ground upon which to institute proceedings in court. The Commission in the orderly conduct of its business must ascertain the facts alleged in a complaint by holding a public hearing and then, if the facts justify such action, find that the party complained of is violating the law, and by proper order refer the matter to the attorney general, as the law enforcing officer of the Commission, for such action as he may deem proper to enforce the law."

The complaint in this case appears to have been brought properly before this Commission and heard under aforesaid §§ 64 and 65 and appears to be based upon an alleged violation of the respondent of its duty to serve the complainant under § 38 aforesaid.

This proceeding, therefore, seems in general a proper one to be entertained by this Commission but question has been raised as to the proper scope of the findings and order where the question of fraudulent obtaining, or theft of electricity is controverted.

While under § 38, aforesaid, this respondent has a general duty to serve the public, respondent has taken the position and has apparently established a practice based upon the proposition that the fraudulent obtaining or theft of electricity by a customer places that customer, for the time being at least, in such position that he is not reasonably entitled to service and that his service may be discontinued until a settlement is made. This appears to be a common practice among utility companies and it has been upheld in other states, although apparently the practice has not yet been made the subject of a decision by the courts of this state or by this Commission. (Madregano v. Wisconsin Gas & E. Co. (1923) 181 Wis. 611, 195 N. W. 861; Gardner v. Springfield Gas & E. Co. (1911) 154 Mo. App. 666, 135 S. W. 1023.)

Where the wrongful taking of electricity is admitted, the application of this practice does not present especial difficulty, but where, as in the case now before this Commission, the wrongful taking is denied, the matter is not so simple. Complainant urges that in any event the Commission has power to require the restoration of service and to prescribe the conditions under which such service should be restored. To prescribe just conditions of restoration of service necessarily involves adjudication of the question as to whether the electricity was or was not wrongfully obtained The conditions of restoration naturally would be quite different if the customer were found not to have wrongfully taken electricity without paying therefor than if he were found to have done so. Obviously, an equitable condition of restoration of service where the customer has fraudulently taken or stolen electricity would be that the customer pay for the electricity so taken or stolen. Likewise, it is quite common in cases where theft is ad-

mitted to require, as a condition for the restoration of service, that certain protective devices be established in the customer's premises at his own expense to prevent repetition of such wrongful acts. Neither of these conditions, nor various others that might suggest themselves, could be imposed justly in a case where the customer has not been guilty of such wrongful practices. It is, therefore, necessary, as a practical matter and with proper regard to justice to both parties, that in a controverted case, where the wrongful taking is alleged on one side and denied upon the other, such question be determined before conditions of restoration of service can properly and equitably be established.

The determination of that question is alleged to be a judicial question, beyond the power of this Commission properly to determine. This Commission is not a court but is an administrative Commission charged with the performance of certain executive and administrative duties. (People ex rel. Board of Administration v. Peoria & Pekin U. R. Co. 273 Ill. 440, P.U.R. 1916E, 795, 113 N. E. 68, also to the same general effect, Alton Water Co. v. Illinois Commerce Commission, 279 Fed. 869, 871, P.U.R.1922E, 623; Illinois Power & Light Corp. v. Commerce Commission, 320 Ill. 427, 431, P.U.R.1926C, 690, 151 N. E. 236; State P. U. C. ex rel. Mitchell v. Chicago & W. T. R. Co. (1916) 275 Ill. 555, 572, P.U.R.1917B, 1046, 114 N. E. 325, Ann. Cas. 1917C, 50.) In the case of People ex rel. Board of Administration v. Peoria & Pekin U. R. Co. *supra,* the court drew a distinction between the performance of executive and administrative duties and the determination of controverted rights, the latter being held to constitute a judicial question which the Commission had no power to decide. The particular controverted right involved in the aforesaid case was one growing out of a contract between the parties, but the general principle appears equally applicable to the case now before the Commission. A number of rights relating to both the consumer and the utility company will necessarily depend upon and be determined by an adjudication of the aforesaid question. Considering the various aspects of the matter, the Commission inclines to the view that the determination or adjudication of the question of whether the customer did or did not fraudulently obtain or steal electricity is a question of a judicial nature, proper to be presented to and decided by a court rather than by an administrative Commission.

In the case of Madregano v. Wisconsin Gas & E. Co. *supra,* at p. 618 of 181 Wis. the supreme court of Wisconsin took a similar view in a case where like circumstances were present. In that case the court said:

"The plaintiffs allege in this case that they have not unlawfully converted electrical current to their own use. The defendant alleges that they have. . . . This is a pure judicial question and involves the exercise of judicial power. Nor do Commissions have power to render a judgment under such circumstances."

It has not been questioned that the complainant could at any time bring an action in his own behalf before a court of competent jurisdiction for relief by injunction or otherwise against this respondent and for such

damages as might have arisen by reason of unlawful interruption of his service. Section 73 of the Illinois Commerce Commission Act provides specifically for the bringing of such an action in the courts by any person who has suffered damage by reason of any act or omission of a public utility in violation of the Commerce Commission Act or of any rule or order of the Commission. It appears, therefore, that relief directly through the courts is available to this complainant.

The scope of the findings and order in this proceeding will, therefore, be limited to the reasonableness of the practice of an interruption by the utility company of a customer's service under the circumstances here present and as to whether or not the utility company acted in good faith and upon reasonable cause in discontinuing the service of this complainant. If it should appear that service was interrupted arbitrarily or through caprice or oppressively or without probable cause it would be proper that an order issue requiring the immediate resumption of service and that steps be taken, if necessary, under § 75 of the said act, to enforce the requirements of the said order. If, however, the interruption of service be made in good faith and upon a reasonable belief and probability that electrical energy was in fact being stolen or fraudulently obtained, the Commission will not attempt to determine the ultimate question as to whether the energy was in fact so stolen or fraudulently obtained, but will dismiss the proceedings before it, leaving the complainant to seek his remedy before a court, where all of the questions necessarily involved can be determined, and proper relief afforded both to the customer and to the utility company.

The Commission having considered all of the evidence, both oral and documentary, the statements, briefs, and arguments of the parties and being fully advised in the premises, is of the opinion and finds:

1. That the facts in reference to the subject matter of this complaint are as more fully set forth in paragraphs six (beginning on page 3), seven and eight (ending on page 5) in the recitals of this order, which said recitals are hereby adopted as findings of fact;

2. That the Public Service Company of Northern Illinois, respondent, is a public utility subject to the jurisdiction of this Commission; that the complainant, Anthon Mathison, is a resident of the village of Maywood, in Cook county, Illinois, and formerly received electric service from the said Public Service Company of Northern Illinois, that his service was discontinued by the said company for the reasons and under the circumstances hereinbefore stated, that he has filed with this Commission in proper form a complaint in respect thereto under § 64 of the Commerce Commission Act and that by reason of the foregoing the Commission has jurisdiction to hear and entertain the said complaint to the extent hereinbefore indicated, and has jurisdiction of the parties hereto;

3. That the established practice of the said Public Service Company of Northern Illinois has been to discontinue the service of a customer whom it has good cause to believe is receiving service fraudulently without paying therefor, until satisfactory adjust-

ment and settlement is made in respect to such service, either directly between the parties or through the medium of this Commission or the courts, and that such practice is reasonable and just, though it is likewise reasonable and just that the said company should assume full responsibility for all consequences of such discontinuance of service if it prove to be in fact unjustified;

4. That in interrupting and discontinuing the service of the said complainant the Public Service Company of Northern Illinois has acted in good faith and with reasonable cause to believe that the complainant has in fact received electric service wrongfully without paying therefor, and that it does not appear that the Public Service Company of Northern Illinois acted arbitrarily or with malice or caprice or oppressively;

5. That the Commission expresses no opinion and makes no findings as to whether the said complainant has or has not in fact wrongfully or fraudulently received service without paying therefor but the Commission regards that question as a question of a judicial nature, proper to be presented before a court but not proper to be decided by this Commission;

6. That the complainant has adequate remedy available to him by instituting proceedings in a court of competent jurisdiction seeking restoration of his service and/or damages for its interruption; and

7. That the complaint in this case should be dismissed.

It is therefore *ordered* that the complaint of Anthon Mathison in Docket Case 20340 on August 30, 1930, be, and the same is, hereby dismissed.

NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION, PUBLIC SERVICE COMMISSION

Re International Bus Corporation

[Case No. 6424.]

Certificates — Municipal consent — Service along boundary highway.

1. The Commission issued a certificate for the operation of a two-way bus service along one side of an avenue that formed the dividing line between two municipalities, one of which was willing and the other unwilling to consent to the service, where public convenience and necessity appeared to require the service and where, in view of the lack of precedents, it appeared that the legal question of whether the avenue was a single highway for public use or two highways ought to be left to the courts, p. 363.

Certificates — Safety of two-way service on one side of highway.

2. Public safety was held not to be jeopardized by the granting of a certificate for the operation of a two-way bus service along one side of an avenue that formed the dividing line between two municipalities, one

of which had opposed and the other of which had consented to the bus service, where it appeared that the consenting municipality had ample police power to regulate traffic and insure safe operations by proper markings, signals, policing, parking prohibitions, and other such precautions, p. 364.

[December 23, 1930.]

APPLICATION *of a bus utility for a certificate of convenience and necessity; granted.*

APPEARANCES: Charles L. Feldman, Corporation Counsel of the city of Buffalo, by Jeremiah J. Hurley; Franchot, Runals, Robillard & Cohen, by E. E. Franchot, Attorneys for petitioner; Elton M. Dale, Attorney for Village of Kenmore; Roy R. Brockett, Supervisor of the Town of Tonawanda; Edward Leininger, Mayor of the Village of Kenmore; O. Clyde Joslin, Attorney for property owners and residents on north side of Kenmore avenue between Delaware and Colvin avenues; Walter Ducker, Village Clerk, Village of Kenmore; Harold H. Grabson and D. F. Lane, Village Trustees, Village of Kenmore.

BURRITT, Commissioner: This is an application by the International Bus Corporation for a certificate of convenience and necessity to operate a bus line on Kenmore avenue and Colvin boulevard in the village of Kenmore.

Kenmore avenue is the boundary line between the village of Kenmore and the city of Buffalo. The International Bus Corporation also applied to the city of Buffalo for a consent to operate eastwardly on Kenmore avenue, between Delaware and Colvin avenues, but such consent has not been granted. It is, therefore, proposed to operate the bus in both directions on the north half of Kenmore avenue, within the village of Kenmore, and the village has adopted ordinances permitting such an operation. But service is demanded by a large number of residents in the northeast portion of the village of Kenmore who are now a considerable distance from either bus or trolley service. The operation of the bus in both directions on the north side of Kenmore avenue is opposed by the residents of Kenmore residing immediately on the north side of Kenmore avenue, and by the city of Buffalo.

Local Consent

The village of Kenmore granted the necessary local consent to the International Bus Corporation on July 22, 1929, for a term of twenty years. This consent permits operation on Colvin boulevard and on Kenmore avenue within the village of Kenmore. This consent contains the following provisions:

(a) That the consent hereby granted to operate motor vehicles over Kenmore avenue is intended to continue only so long as the grantee shall not possess and enjoy a consent to operate motor vehicles upon and along Colvin avenue or some other nearby north and south highway other than Delaware avenue within the city of Buffalo; and

(b) That upon the granting of a

consent to operate motor vehicles upon and along said Colvin avenue or said other nearby north and south highway within the city of Buffalo, and the commencement of operation thereover of motor vehicles operated pursuant to the consent hereby granted, the consent hereby granted to operate upon and along said Kenmore avenue shall cease and determine.

This consent was accepted by the International Bus Corporation on August 19, 1930. The International Bus Corporation has a consent from the city of Buffalo to operate on Delaware avenue from down town to the city line, approved by the Commission on October 30, 1924, in Case No. 2221.

Route and Competition

Kenmore avenue is a main east-and-west thoroughfare which not only carries local traffic but a certain amount of through traffic moving east and west along the northern edge of Buffalo. Colvin boulevard is a north-and-south street, extending from the city of Buffalo through the eastern portion of the village of Kenmore. It is entirely in a residential section. The total length of the route applied for, which is from the point where Kenmore avenue crosses Delaware avenue, eastward on Kenmore avenue and then north on Colvin boulevard to Stillwell avenue, near the northern boundary of the village of Kenmore, is 1.2 miles of which about 3,000 feet is on Kenmore avenue.

The proposed line connects at the corner of Kenmore and Delaware avenues with the bus line of the International Bus Corporation, which extends from downtown Buffalo through the village of Kenmore to Tonawanda. The proposed operation will simply connect the Colvin boulevard section with the present Delaware avenue bus line, via Kenmore, during the greater part of the day. During the peak hours it is proposed to operate a through service from the northern terminal of the proposed line through Kenmore to downtown Buffalo, via the Delaware avenue route in Buffalo. The Delaware avenue line passes north and south through the business section of the village of Kenmore. Busses now operate over this route to downtown Buffalo on a 5-minute headway in the base, and 2-minute headway in the peak.

To the west of Delaware avenue is the Elmwood line, which also operates into Buffalo. Immediately to the south of Kenmore avenue and about one-fourth of a mile west from Colvin boulevard, the Virgil avenue (Kenmore No. 9) Buffalo trolley line makes a turning loop at a point about half way between Colvin and Delaware on the south side of Kenmore avenue in Buffalo. It does not come into the village of Kenmore, but is available for use of Kenmore residents living just north of Kenmore avenue and desiring to ride downtown in Buffalo. The route in Buffalo on this Virgil avenue (Kenmore No. 9) car is said to be a circuitous one and not generally used to go downtown because of the time required to make the trip. It was testified that the cars are seldom used to capacity, probably on this account.

Equipment and Operation

It is proposed to use the same type

of busses on this route as are used on the Delaware avenue line at the present time. These busses are 7 feet 6 inches wide, and a little over 33 feet long. A witness for the company testified that these busses can pass each other with a space of one foot between them, moving at a speed of 25 miles per hour, and that they can turn from one 18-foot street into another but require the full width of the street to do so.

Kenmore avenue is 36 feet in width, of which 18 feet is said to be within the village of Kenmore. An ordinance of the village of Kenmore provides for the division of this portion of the street into two traffic lanes "the northerly 9 feet of said pavement to be known as the westerly traffic lane, and the balance of the street and pavement as the easterly traffic lane." Busses bound east and north on the proposed route will use the southerly lane of this division of the street, and the busses westward bound would use the northerly lane. Another ordinance prohibits the parking of vehicles in Kenmore avenue, between Colvin and Delaware avenues.

The petition states that only three busses will be used in the operation. Testimony shows that during the greater part of the day only one bus will be operated. The total time required to make the round trip will be twenty minutes. The running time in one direction is approximately six minutes, with an eight-minute layover at the north end of the line at Stillwell avenue. During the peak hours, morning and night, extra busses will be operated along Delaware avenue to care for the additional traffic resulting from the operation of this line. This will make a headway of from twelve to fifteen minutes during these periods. While only one bus is operating there will, of course, be no possibility of two busses meeting on Kenmore avenue. The schedule could be so arranged that even in the peak hours busses would not be required to pass on Kenmore avenue, and this should be done.

The fares to be charged are: 5 cents between points within the village of Kenmore, and 10 cents between points within the village of Kenmore and points in the city of Buffalo.

Opposition

The city of Buffalo vigorously opposed the proposed operation on Kenmore avenue on several grounds. It maintained that Kenmore avenue, as a whole, is one public highway, and not two highways—one in Buffalo and one in Kenmore, as contended by the village. It maintained that operation in both directions on the northerly side of Kenmore avenue would be a violation of the public highway law. The city also objected either to a larger number of busses on Delaware avenue to serve the village of Kenmore or to more Kenmore passengers on the present busses which might reduce the service to Buffalo residents using the Delaware avenue bus line. It claimed that International Bus Corporation had no franchise from the city to operate busses from Colvin boulevard and Kenmore avenue downtown on the Delaware avenue route in Buffalo. The city further points out that while the franchise granted by the village of Kenmore was for twenty years, that the franchise under which the International Bus Corpora-

tion is operating on Delaware avenue is for ten years and expires in 1934. The city maintains that Kenmore village could use its own streets, such as Hazeltine or Argonne, which parallel Kenmore avenue to the north and are wholly within the village of Kenmore. It also pointed out that the Hertel avenue street car line (Kenmore No. 9) which makes a loop at the southern edge of the village of Kenmore is available for the transportation of passengers in this area.

Residents on the north side of Kenmore avenue in the village of Kenmore almost unanimously objected to the proposed bus operation on the north half of Kenmore avenue, claiming that it interferes with their property rights and would cause them great inconvenience, and in a few cases would interfere with their business. Several residents testified that they have no driveways from the street into their property, and they would be compelled, therefore, to use the streets for parking their cars. They also claim that the operation of busses westwardly, so close to the curb, which would be really less than 2 feet from the sidewalk, would create a hazardous and dangerous condition, as would the discharging of passengers in the middle of the street on the eastwardly operation of the bus. These residents, through counsel, generally maintained that the operation proposed would be hazardous to public safety and inimical to their rights and privileges as citizens.

Convenience and Necessity

Almost the entire eastern half of the village of Kenmore is a well-settled residential area. Testimony showed that in the eastern half of the area between Delaware avenue and Colvin boulevard there are 800 residences, practically all of which are occupied. Within one fourth of a mile of either side of Colvin boulevard in the village of Kenmore, there are between 4,000 and 5,000 people. The great majority of these families have at least one person working downtown in Buffalo and most of them do some shopping downtown in Buffalo. The majority of these people also have to buy their groceries and do their small shopping on Delaware avenue in the village of Kenmore. Many witnesses testified that they are now compelled to walk from one half to three quarters of a mile and in some cases even a mile to Delaware avenue to do their shopping, or to take a Delaware avenue bus downtown. These residents maintain that this is an unnecessary hardship particularly in inclement weather, and demanded bus service as a necessary convenience on Colvin boulevard. There is also a considerable area within the city of Buffalo, just to the south of Kenmore avenue, which would undoubtedly use the proposed line if established rather than walk to Delaware avenue or use the Hertel avenue trolley line.

Clearly the people in this considerable area in Kenmore are entitled to more transportation than is now afforded them. The proposed bus line offers one way to meet this need, and under ordinary circumstances approval of the certificate of convenience and necessity could readily be granted. But in this case both legal questions and questions of public safety are presented, and these must be carefully

examined. For even though great public convenience and necessity may exist, the Commission should not permit an obvious violation of highway laws to supply it. Nor would it be justified in permitting operation which might seriously jeopardize public safety. It must be determined, therefore, (1) whether the proposed operation is a legal one; and (2) whether public safety can be properly safeguarded if the operation of the route is approved.

Legal Questions

[1] The basic legal question involved in this case—which has been carefully examined by counsel—is this:

"Is Kenmore avenue (situate on the boundary line between the village of Kenmore and the city of Buffalo) a single highway for public use, or is it two highways, one in the village of Kenmore and one in the city of Buffalo?"

So far as construction, repair, and maintenance are concerned there appears to be no dispute, that each municipality has authority over that portion of the highway within its geographical limits; but there is a difference of opinion as to whether the local authorities of Kenmore may adopt valid resolutions prescribing the use of the part of the highway physically within the village of Kenmore, when such usage is at variance with the regulations specified in the Highway and Traffic Law—if we consider that the entire highway is a single one.

The city of Buffalo holds that this highway is a joint one and that the common law rule,—that where joint authority is vested in several it must be executed by all—is applicable. Even though usage is urged as a yardstick to measure jurisdiction, it is doubtful whether a usage which amounts to an assumption of the right to change the rule of the road is within the power of the local authorities so far as a joint highway is concerned, although it is undoubtedly within their power, or may be under special circumstances, if the highway were wholly within the village of Kenmore.

On the other hand, the village of Kenmore and the International Bus Corporation hold that the Kenmore village authorities have jurisdiction and that the articles adopted by them relative to the use of their portion of this highway are in all respects valid. They maintain that if the use of the highway may be regulated in one particular by the village, such use may be regulated in other particulars including the one in question, since jurisdiction cannot be split up wholly on the basis of the manner of its exercise.

We have already determined that public convenience and necessity require the granting of this certificate. Aside from the question of safety which we will deal with later, the question presented to the Commission is, "Shall it go back of the express terms of a prima facie valid local consent and allow a technical legal construction to prevent required, convenient, and necessary bus service to the public? Counsel advises that there are no direct precedents. Since well-informed opinion may well disagree in these technical matters, and since convenience and necessity have been clearly established, the certificate applied for should be granted, allowing the courts to pass upon the legal ques-

tions involved, if and when such a review should be determined upon. This view is supported by the fact that the equities of the case are all in favor of the applicant, and a court's decision passing upon the question of law involved, is desirable.

As to other objections of the city of Buffalo, the number of busses on Delaware avenue is not limited by the consent of the city of Buffalo, and if the present city service on this street proves to be inadequate for the additional passengers which may be put upon it, the remedy is to add the necessary busses. What is proposed is only added use of the Delaware avenue franchise. As far as the present proposal is concerned the date of expiration of the Delaware avenue consent is not important. The operation under this consent extends only to Delaware avenue.

The answer of the village to the suggestion that it could and should use one of its own streets, parallel with and to the north of Kenmore avenue, is that these streets are not suitable for heavy bus operations. They are entirely residential, too narrow, not paved to carry heavy busses, and the maintenance of these residential streets is chiefly by its residents, whereas Kenmore avenue is a business street. Moreover, local residents almost unanimously object to the use of these streets for bus purposes.

Public Safety

[2] The testimony and the briefs in this case show that the village has ample police power to regulate traffic and to insure public safety, by proper markings, signals, and stationing of traffic officers to guide the traffic. The village has passed the necessary ordinances prohibiting parking and providing proper markings. Assurances have been received from the mayor of the village that all necessary and proper signs, marking, and other precautions will be taken by the police to protect public safety.

The objection of the people residing on the north side of Kenmore avenue, that their property rights will be interfered with, and in some cases business interests injured, has been carefully reviewed. These persons maintain that the proposed no parking regulation interferes with their own convenience and to some extent will injure their business. It appears that these matters have been heard and considered by the village authorities in public hearing and that the village has, after considering the alternatives, deliberately determined that the necessities and requirements of the residents as a whole require this regulation, and we find nothing in the evidence to lead us to modify this finding. As to property damage or loss of business that may result, the Commission has no authority in such matters, and relief, if any may be had, lies in the proper courts of law.

Conclusion

In view of the fact that undoubtedly public convenience and necessity have been found to exist, that no definite inhibitions of law or court decisions which would prevent us from granting this petition can be found, and further, in view of the fact that the village of Kenmore has taken the necessary steps to properly provide for public safety, this petition should be granted, and a certificate of con-

venience and necessity issued to the International Bus Corporation. An order to this effect accompanies this memorandum. [Order omitted.]

Chairman Maltbie and Commissioners Van Namee and Lunn concur; Commissioner Brewster not present.

NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION, PUBLIC SERVICE COMMISSION

Re Charles Vollmer

[Case No. 5098.]

Certificates — Revocation — Territorial violation.

The petition of a street railway company to have a certificate of convenience and necessity, held by a bus operator, revoked because he had violated the terms in competing with the street car company, was denied, where it appeared that such unauthorized operations had been restrained by a court's injunction after three days, and had not during that short period materially injured the railway company.

[December 23, 1930.]

PETITION *of a railway company to have a certificate of convenience and necessity of a bus operator revoked; denied.*

APPEARANCES: W. Arthur Kline, Amsterdam, for Charles Vollmer; Wesley H. Maider, Gloversville, for Fonda, Johnstown and Gloversville Railroad Company.

LUNN, Commissioner: On October 18, 1928, this Commission granted to Charles Vollmer a certificate of convenience and necessity authorizing the operation of a motor bus route in the city of Amsterdam. The primary purpose of this route was to replace the service formerly provided by a street car line of the Fonda, Johnstown and Gloversville Railroad Company, which line had been abandoned with the consent of this Commission.

The present proceeding is brought by a petition made by the Fonda, Johnstown and Gloversville Railroad Company alleging that Vollmer has violated the terms and conditions of this certificate and asking that the certificate be revoked.

A public hearing was held before me at Albany. At this hearing there was little dispute as to the relevant facts. It appears that there is located in the city of Amsterdam an amusement park known as Jollyland; that to reach this park from his certified route it is necessary for Vollmer to travel over Crescent avenue extension; that during three days in June, 1930, Vollmer operated his busses into

the park. Justice Brewster granted an injunction against such operation, stating in his opinion:

"As to the operation of the Vrooman avenue bus line to Jollyland Park, this, too, appears unauthorized since it is not expressly permitted by the certificate of the Public Service Commission and, therefore, such operation runs counter the statute (Transp. Corp. Law, § 66), since part of the route is upon public streets where such consent is required."

The bus line now operated by Vollmer is providing a necessary and needed public service. To require its discontinuance would be a real hardship to many residents of Amsterdam who rely upon it for their public transportation. It does not appear that the short operation to the park by Vollmer materially injured the railroad company and any repetition of such operation is prevented by the supreme court injunction to which I have above referred.

I therefore recommend that the petition in this proceeding be denied. An order to that effect is attached hereto. [Order omitted.]

DISTRICT OF COLUMBIA COURT OF APPEALS

Mason M. Patrick et al. Constituting the Public Utilities Commission of District of Columbia

v.

F. B. Smith

[No. 5168.]

(— App. D. C. —, 45 F. (2d) 924.)

Motor carriers — Power of Commission — Taxicab insurance.

1. The Commission, in the exercise of its general regulatory powers granted by Congress, has no authority to require taxicab operators to file a public liability bond, indemnity insurance, or statements of financial responsibility, p. 367.

Commissions — General powers — District of Columbia.

2. The Congress of the United States exercises exclusive legislative powers within the District of Columbia, and the Public Utilities Commission of that District is, therefore, merely an administrative agency, p. 369.

[December 1, 1930.]

PATRICK v. SMITH

APPEAL by the members of the Public Utilities Commission of the District of Columbia from a decree of the Supreme Court of the District of Columbia, granting an injunction to a taxicab operator to restrain the Commission from requiring public liability protection to be filed by taxicab operators; decree affirmed.

APPEARANCES: Robert E. Lynch and William A. Roberts, both of Washington, for appellants; Leon Robbin and Jacob Milwit, both of Washington, for appellee.

Before Martin, Chief Justice, and Robb and Van Orsdel, Associate Justices.

MARTIN, Chief Justice: [1] The appellee, as plaintiff below, brought suit to enjoin the Public Utilities Commission of the District of Columbia from enforcing a certain regulation adopted by it, whereby he would be required to furnish a bond or indemnity insurance or a statement of financial responsibility in order to secure a license to operate his taxicab within the District. It is conceded that the taxicab was to be operated as a common carrier of passengers for hire; and that appellee was denied a license to operate it within the District unless he complied with the regulation aforesaid. The controlling question in the case is whether the Commission possesses the lawful authority to make and enforce such a regulation.

The lower court held that the Commission did not possess such authority, and enjoined its enforcement. Whereupon this appeal was brought.

The Public Utilities Commission of the District of Columbia was created by § 8 of an Act of Congress approved March 4, 1913 (37 Stat. 974). The powers and duties of the Commission are expressly set forth in that section. The provisions which are cited in behalf of the Commission as authority for the regulation in question are to be found in paragraphs 2, 92, and 96 of the section.

Paragraph 2 provides that every public utility doing business in the District of Columbia is "required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable."

Paragraph 92 provides that the provisions of the section are to be interpreted and construed liberally "in order to accomplish the purposes thereof," and further provides that the Commission shall have, in addition to the powers specified and mentioned, all additional, implied, and incidental powers proper and necessary to carry out the powers specified in the section; and further provides that no rules, ordinances, acts, or regulations of the Commission shall "be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto."

Paragraph 96 provides that, if the Commission finds "that repairs, improvements, or changes in any . . . facilities of any common carrier ought reasonably to be made, or that any addition of service or equipment ought reasonably to be made thereto,

or that the vehicles . . . of any . . . common carrier are unclean, insanitary . . . or that any addition ought reasonably to be made thereto, in order to promote the comfort or convenience of the public or employees, or in order to secure adequate service or facilities, the Commission shall have power to make and serve an order directing that such repairs, improvements, changes, or additions to service or equipment be made within a reasonable time. . . . "

Acting under this alleged authority, the Commission in December, 1929 (P.U.R.1930C, 158, 164) issued an official order entitled "Rules and Regulations Governing the Equipment and Operation of Motor Vehicles . . . Operated for Hire in the District of Columbia," reading in part as follows:

'Section 9 (a) No person, firm, or corporation shall operate any motor vehicle, as herein defined, unless and until the person, firm, or corporation shall:

"(1) File with the Commission a sworn statement showing the ability of the person, firm, or corporation to pay all damages which may result from any and all accidents due to the negligent use or operation of such vehicle; or

"(2) File with the Commission security, indemnity, or a bond guaranteeing the payment by the person, firm, or corporation of all such damages; or

"(3) Insure to a reasonable amount the person's, firm's, or corporation's liability to pay such damages; and unless the person, firm, or corporation shall

"(4) File with the Commission, as often as the Commission shall in writing demand, in form prescribed by the Commission, evidence of the person's, firm's, or corporation's, compliance with the provisions of this section."

The Commission also added a statement that it will accept as compliance with subparagraph No. 1 a sworn statement, subject to verification, showing that the person making proof of financial responsibility has available net assets of a permanent character which would be sufficient to attach under judgment in amounts beginning with $8,000 for the operation of 5 cabs or less, and increasing to $65,000 for the operation of over 200 cabs.

The Commission will accept as compliance with subparagraph No. 2 a bond of the applicant with a solvent and responsible surety company or to two personal sureties, to be approved by the Commission that the applicant will pay all final judgments recovered against him for injury to one person up to $5,000, $10,000 for injury to more than one person, and $1,000 for property damage in any one accident, from the operation of his vehicles, providing, however, that an applicant seeking a license may file a bond in sums scheduled according to the number of motor vehicles for which he applies.

The Commission will accept, as compliance with subparagraph No. 3, a policy or certificate of liability insurance for each motor vehicle for which a license is sought, approved by the Commission, insuring the applicant in the sum of $5,000 for injury to one person, $10,000 for injury to

more than one person, and $1,000 for property damage in any one accident, through the operation of the licensed vehicle.

We are of the opinion that the Commission exceeded the powers granted to it by the act in promulgating the regulation in question, and accordingly hold that the decree of the lower court enjoining its enforcement is right.

The provisions of paragraphs, 2, 92, and 96, of § 8, *supra*, plainly relate to the material equipment and facilities of all utilities within the District; and their actual physical operation; also to the efficiency of the service rendered by them, and the regulation of the rates charged by them. The act contains no mention or implication of any authority delegated to the Commission to make or enforce such a regulation as is involved herein. And, in view of the fact that such a regulation necessarily imposes a substantial tax upon a class of persons within the District, which may be diminished or increased at the discretion of the Commission, it is not to be presumed that such authority would be granted by mere implication in the act.

[2] It must be remembered that the Congress of the United States exercises exclusive legislative powers within the District of Columbia, and the Public Utilities Commission is merely an administrative agency. In District of Columbia v. Bailey (1898) 171 U. S. 161, 176, 43 L. ed. 118, 18 Sup. Ct. Rep. 868, 874, Mr. Justice White, speaking for the Supreme Court of the United States, said: "The necessary operation of these provisions of the statutes is to cause the District Commissioners to be merely administrative officers, with ministerial powers only. The sums of the municipal powers of the District of Columbia are neither vested in nor exercised by the District Commissioners. They are, on the contrary, vested in the Congress of the United States, acting *pro hac vice* as the legislative body of the District, and the Commissioners of the District discharge the functions of administrative officials."

In Coughlin v. District of Columbia (1905) 25 App. D. C. 251, 254, the Commissioners of the District of Columbia, under an act of Congress empowering them to make all regulations as they might deem necessary for the protection of the lives, limbs, health, and comfort of all persons within the District, passed an ordinance requiring the removal of snow and ice from the sidewalks. Coughlin was convicted of a violation of the regulation, and appealed. This court sustained the appeal, and among other things said: "That various municipalities may have exercised such power, as appears from various municipal ordinances collated in the brief on behalf of the appellee, is not to the point. Municipalities are usually vested with quasi legislative powers, among them the sovereign power of taxation and assessment, and from the fact that municipal ordinances are elsewhere to be found, analogous to the so-called regulation here in question, it is not to be inferred that similar powers exist in the Commissioners of the District of Columbia. The Commissioners are not the municipality, but only the executive organs of it; and Congress

has reserved to itself, not only the power of legislation in the strict sense of the term, which it cannot constitutionally delegate to anyone or to any body of men, but even the power of enacting municipal ordinances, such as are within the ordinary scope of the authority of incorporated municipalities. It has delegated to the Commissioners simply the power of making 'police regulations,' and only such police regulations as are usual and commonly known by that designation. . . ."

See also United States ex rel. Daly v. Macfarland (1907) 28 App. D. C. 552; Fay v. Macfarland (1908) 32 App. D. C. 295; Newman v. Willard's Hotel Co. (1918) 47 App. D. C. 323; Hazard v. Blessing (1924) 55 App. D. C. 114, 2 F. (2d) 916; 26 R. C. L. 676.

The decree of the lower court is affirmed, with costs.

WASHINGTON DEPARTMENT OF PUBLIC WORKS

Re J. A. & F. T. Callender

[D-719, Order M. V. 2803.]

Monopoly and competition — Rerouting of express service — Motor carriers.

A carrier engaged in the business of picking up and delivering motion picture films in connection with a railway express agency, and previously operating between two cities over railway and ferry lines, should not be granted authority to establish an independent motor service between such cities for the continuation of such business after the successive abandonment of the railway and ferry services, in the absence of evidence that authorized motor carriers already operating on that route are not able to furnish adequate service.

(PURSE, Supervisor of Public Utilities, dissents.)

[February 27, 1931.]

APPLICATION *of an express carrier for a certificate of convenience and necessity to establish a motorized service between Seattle and Tacoma, Washington; denied.*

By the DEPARTMENT: This matter came on regularly for hearing at Tacoma, Washington, on the 15th day of December, 1930, pursuant to notice duly given, before B. R. Lewis, supervisor of transportation; Evalyn Brotherton reporting the proceedings.

The parties were represented as follows: J. A. Callender and F. T. Callender, by Rex Roudebush, Attorney, Tacoma; Des Moines Auto Freight Company, Suburban Transportation System, Pacific Motor Transport Company, Washington Motor Freight Association, Tacoma-Seattle Auto Freight, Railway Ex-

press Agency, and North Coast Transportation Company, by Hance H. Cleland, Attorney, Olympia.

Witnesses were sworn and examined, documentary evidence was introduced, and the Department, being fully advised in the premises, makes and enters the following findings of fact and order.

I

About the year 1916, J. A. Callender began in Seattle and Tacoma the business of picking up and delivering motion picture films, evidently in connection with the service of the railway express. In about 1919 or 1920, the firm, which had become Callender Brothers, took over the express business of the Seattle-Tacoma electric interurban railway. Goods were transported between the two towns on the interurban cars and were picked up and delivered with motor trucks. When the interurban railway ceased operations in 1928, Callender Brothers made an arrangement with the Puget Sound Navigation Company and continued their business substantially as before, that is, the goods were transported between the two cities on the boats of the Navigation Company and were picked up and delivered within the cities with motor trucks. In November, 1930, the Puget Sound Navigation Company made public announcement that it would discontinue its passenger boat service between Seattle and Tacoma on December 15, 1930. This application followed.

II

Protests against the application were filed by North Coast Transportation Company, Pacific Motor Transport Company, Suburban Transportation System, Des Moines Auto Company, Motor Coach Association of Washington, Washington Motor Freight Association, Great Northern Railway Company, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Oregon-Washington Railroad and Navigation Company, and Railway Express Agency.

North Coast Transportation Company furnishes passenger and express service by motor stages between Seattle and Tacoma; Pacific Motor Transport Company and Tacoma-Seattle Auto Freight furnish freight service by motor truck; and the Railway Express Agency furnishes express service on the trains between Seattle and Tacoma.

III

Authority to grant the application must be found in § 4, Chap. 111, Laws of 1921:

"No auto transportation company shall hereafter operate for the transportation of persons and/or property . . . without first having obtained . . . a certificate declaring that public convenience and necessity require such operation; but a certificate shall be granted when it appears to the satisfaction of the Commission that such person, firm, or corporation was actually operating in good faith, over the route for which such certificate shall be sought on January 15, 1921. . . . The Commission shall have power, after hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this act, only when the existing auto transportation company or companies serving such

territory will not provide the same to the satisfaction of the Commission. . . ."

It will be noted that the section makes no mention of express, but refers only to "persons and/or property." The term "express" was adopted by the Department to facilitate supervision and regulation and is defined in Rule 80 of the Department's rules and regulations governing auto transportation companies as follows:

"The term 'express' as used in certificates of public convenience and necessity includes only such shipments as can be handled as an adjunct and incidental to the passenger service authorized thereby; must be confined strictly to vehicles operated primarily for the carriage of passengers; must not be of sufficient volume to disturb the convenience, speed, and other essential qualities of the passenger service, and the rates for carriage of such express must be based primarily upon the expedited service rendered."

The service contemplated by applicants clearly is not an express service within the term of the definition. Applicants do not intend to operate passenger stages, but are planning to operate trucks that will not carry passengers. There is little in the record to indicate that their rates in any way reflect the expedited service. On the contrary, their rates, including pick-up and delivery, are only slightly higher than the express rates of the North Coast Transportation Company which furnishes no pick-up or delivery service, and on packages weighing less than a hundred pounds are lower than the auto freight companies. The applicants have requested a class of certificate which was created by a rule of the Department and have failed to bring themselves within the terms of the rule.

Applicants evidently believe that there is an express service in the auto transportation field other than the one defined in the Department's rules. They did not offer to define it at the hearing or in their brief.

The Public Service Commission Act defines an "express company" as follows:

"The term 'express company' when used in this act, includes every corporation, company . . . and person . . . who shall engage in or transact the business of carrying any freight, merchandise, or property for hire on the line of any common carrier operated in this state." Section 10344, Rem. Comp. Stat.

Obviously the previous operations of Callender Brothers on the interurban and on the boats brought them within the terms of the definition and obviously their proposed operation over the highway with their own vehicles takes them without the terms of the definition.

The chief advantage of any motor truck service over rail or boat service is the greater speed, more flexible schedules and the pick-up and delivery. These characteristics are common to motor truck service whether it be called "express" or "freight." An express certificate based on that distinction would be a mere camouflage; it would be a freight certificate under another name. Having obtained the certificate, what would prevent the holders from lowering their rates and competing actively for the freight business? It is doubtful

whether the Department would have the power to compel them to maintain their proposed rates. A carrier ordinarily has the right to compete for business.

The Department is of the opinion and finds that the service proposed by the applicants is freight service within the meaning of the law and the rules of the Department. Pacific Motor Transport and Tacoma-Seattle Auto Freight each hold certificates authorizing freight service between Seattle and Tacoma. There is nothing in the record to indicate that the service which they furnish is unsatisfactory or that they have been ordered to furnish improved service. In such a situation it has been definitely settled that the Department has no authority to grant an additional certificate over the same route. State ex rel. United Auto Transp. Co. v. Department of Public Works, 129 Wash. 5, P.U.R.1924D, 114, 223 Pac. 1048; State ex rel. Krakenberger v. Department of Public Works (1926) 141 Wash. 168, P.U.R. 1927C, 305, 250 Pac. 1088; Pacific Northwest Traction Co. v. Department of Public Works (1929) 151 Wash. 659, 276 Pac. 566; North Coast Transp. Co. v. Department of Public Works (1930) 157 Wash. 79, 288 Pac. 245.

Some suggestion is made that Callender Brothers are entitled to a certificate because they were operating in good faith prior to 1921. We think this suggestion is sufficiently answered by pointing out that Callender Brothers up to the day of the hearing had never operated over the highway. The good faith provision of the statute obviously was inserted for the benefit of concerns which were on the date set operating on the public highways as common carriers of passengers or freight.

Furthermore, the Department is convinced that public convenience and necessity do not require the service proposed. Exhibit 9 shows that the North Coast Transportation Company operates stages between Seattle and Tacoma every half hour from 6 A. M. in the morning until 12 midnight. Express service is furnished from depot to depot. Motion picture films and iced food shipments are not accepted. Railway express service is furnished from Seattle at 7:50 A. M., 8:15 A. M., 8.30 A. M., 12 noon, 4:15 P. M., 6:25 P. M., 11:15 P. M.; and from Tacoma at 5 A. M., 8:15 A. M., 11:09 A. M., 1:15 P. M., 3:29 P. M., 7 P. M., 7:50 P. M. and 8:25 P. M. The Railway Express Agency has free pick-up and delivery service in Seattle and Tacoma to about the same extent as the applicants and will accept for shipment any article transported by applicants. The motor freight lines have trucks leaving Seattle at 3 A. M., 11 A. M., 12 noon and 5 P. M., and leaving Tacoma at 12 noon and 5 P. M. The motor freight lines have a free pick-up and delivery service within the business districts of Seattle and Tacoma and will accept any article transported by the applicants. There are in addition several freight trains each way daily between Seattle and Tacoma and two freight boats. Exhibit 21 shows that between the hours of 8 A. M. and 5 P. M. there are thirty scheduled services southbound and twenty-nine northbound. On such a record it would be impossible to find public con-

venience and necessity for the proposed service.

Applicants contend that their business is not competitive in a true sense with the business of the other carriers and to substantiate this claim point out that the North Coast Transportation Company does not furnish pick-up and delivery service; that the Railway Express does not operate at convenient hours, and that the motor freight service is slower. All this might be admitted and still the application would have to be denied. The law authorizes the Department to order and require improved and sufficient service. An additional certificate may be granted only when the regulatory power proves ineffective.

Applicants point out that the denial of their application will destroy their business. The Department does not see the materiality of this argument. Applicants could have obtained a certificate in 1921 had they placed themselves in a position to demand it. Instead they elected to conduct their operations, first over the electric interurban, and then over the boats of the Puget Sound Navigation Company. Both the boat service and the electric interurban service have been abandoned. It is this fact which threatens to destroy the applicants' business and not any action of this Department. It is, of course, unfortunate for the applicants that the boats quit operating but we cannot see that that fact gives them any right to a certificate. If it does, then the Puget Sound Navigation Company which had a much greater business between Seattle and Tacoma is likewise entitled to a certificate in order that it may not lose its business.

ORDER

Wherefore it is *ordered* that the application herein be denied.

PURSE, Supervisor of Public Utilities, dissenting: I am in accord with the majority in so far as the findings of fact one and two are concerned and with the first part of three, which relates to the granting of applications as found in § 4, Chap. 111, Laws of 1921.

I do not agree with the majority conclusions for the following reasons:

(A) The business of Callender Brothers was started prior to the enactment of the certificate law. Property was being transported between Seattle and Tacoma; pick-up and delivery being by motor trucks. This constituted a common carrier operation and brought such operation directly under the jurisdiction of the Department of Public Works. Section 1, Chap. 111, Laws of 1921 (Public Service Laws, § 205) defines an auto transportation company as any person, etc. "owning, controlling, operating, or managing any motor propelled vehicle not usually operated on or over rails used in the business of transporting persons, and/or property for compensation over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the incorporated limits of any city or town." From the evidence it is very apparent that this company comes within the provisions of the act as being a common carrier for hire between fixed termini over a regular route and not operating exclusively within the incorporated limits of any city or town.

"The term 'public highway' when used in this act means every street, road, or highway in this state." (Section 205, Public Service Laws.)

If one were to apply the rule of *ejusdem generis* to the word "highway" in this definition it might not include navigable waters, etc., but would be limited to highways, streets, and roads on land; but an examination of the statute and particularly a consideration of the phrase—"not operating exclusively within the incorporated limits of any city or town" —indicates that it was the object of the legislature to establish control and regulation over auto common carrier traffic in all places not subject to local regulation.

It is my belief that the object and intent of the legislature is the chief rule of construction to which other rules must yield. Neither Seattle nor Tacoma can regulate the operations of this carrier and it would seem that the statute expressly places upon the Department of Public Works the duty of regulating this operation.

(B) Public convenience and necessity for this operation was firmly established through the fact that about one thousand business houses are served by this company in Seattle and approximately six to seven hundred business houses in Tacoma. (Tr. p. 7). And that the average daily shipments from Seattle alone approximate one hundred. The business of Callender Brothers started in a very modest way, the gross business in 1919–1920 being $8,000 and over $34,000 for 1929. The force has been increased from two owners to seven men in all.

(C) The fact that Callender Brothers have not heretofore been issued a good faith certificate as provided for in § 4 of Chap. 111, Laws of 1921, cannot be relied upon as a reason for now refusing them a certificate. Prior to the enactment of the certificate law Callender Brothers were operating as a common carrier between Seattle and Tacoma, using auto trucks as the principal means of conducting their business. Section 208 of the Public Service Law provides in part as follows:

"But a certificate shall be granted when it appears to the satisfaction of the Commission that such person, firm, or corporation was actually operating in good faith, over the route for which such certificate shall be sought on January 15, 1921."

There can be little question but that this clause governing good faith operators was indispensable for the protection of those carriers who had built up their business before January 15, 1921. The enforcement of the act without such a clause would have resulted in the taking of property without due process of law.

The legislature of 1921 did its best to protect vested rights and placed upon the Department the duty of properly applying the law. This case presents a problem of statutory construction and requires the application of the principle that statutes should be interpreted so as to protect vested rights and avoid any construction which would be illogical or contrary to the manifest intention of the legislature. It is my belief that the Department under § 4, Chap. 111, Laws of 1921 was required to bring the then existing operation within its

jurisdiction and regulation at that time and was further required to issue to them a good faith certificate.

(D) Even if the statutory construction is such that Callender Brothers are not entitled to a good faith certificate they would be entitled to a certificate now on the weight of the testimony produced at the hearing showing public convenience and necessity and character of service.

A recent opinion of the attorney general states in part as follows:

"The Auto Transportation Act does not divide transportation of property into classes and if there is any distinction between express traffic and freight traffic, it would be one that would be created by the Department. It is my understanding that a distinction of this character has been created.

"It is our opinion that if the Department has power to create a distinction and issue a certificate of necessity for express service, which it apparently has done by giving such a certificate to the North Coast Transportation Company along with its certificate to operate stages, that it also has power to grant a certificate solely for express purposes. If the applicant, therefore, makes a satisfactory showing that the present express service as rendered by the North Coast Transportation Company is unsatisfactory, the Department would in its discretion have authority to issue a certificate to another party solely for this purpose."

For the reasons stated above it is my opinion that the application of Callender Brothers for a certificate should be granted.

MISSOURI SUPREME COURT, DIVISION NO. 1

State ex rel. Laundry, Incorporated, et al.

v.

Public Service Commission et al.

[No. 30541.]

(— Mo. —, 34 S. W. (2d) 37.)

Pleadings — Complaint against rate classification — Necessary signatures.

1. A complaint by a commercial consumer against the failure of a water utility to give it a favorable rate classification is not such a complaint as would require the signatures of not less than twenty-five consumers in order to confer jurisdiction upon the Commission, p. 383.

Statutes — Construction — Public Service Commission Law.

2. A Public Service Commission law is a remedial statute bottomed upon the police power of the state and must be liberally construed in the interest of public welfare or convenience, p. 386.

Commissions — Nature and general powers — Source of powers.

3. The Public Service Commission is an administrative agency or committee of the legislature, and as such is vested with only such powers as are conferred upon it by the statute creating it, p. 386.

Rates — Construction of schedule — Manufacturers' classification.

4. A manufacturers' rate filed by a water utility with the Commission should be given a liberal, rather than a strict, construction as to the type of commercial consumer entitled to such a rate classification, p. 386.

Discrimination — Duty of the Commission — Rate classification.

5. A rate classification of utility consumers by the Commission in order to be valid must comport with the rule or principle of sound legislative classification, p. 387.

Discrimination — Water — Laundries entitled to manufacturers' rate.

6. An order of the Commission sustaining a water utility's refusal to furnish service to laundries under the special rate charged to general manufacturers was held to be unjustly discriminatory, p. 388.

Reparation — Power of the Commission — Judicial function.

7. The Public Service Commission as an administrative body cannot exercise a judicial function by promulgating an order requiring a pecuniary reparation or refund for alleged excessive rate payments by utility consumers, p. 392.

[January 5, 1931.]

CERTIORARI *by the state upon relation of a laundry company to review an order of the Public Service Commission refusing to order a water utility to serve a laundry company at a "manufacturers' rates"; lower court judgment reversing; Commission order affirmed.*

APPEARANCES: D. D. McDonald and J. P. Painter, both of Jefferson City, for Public Service Commission; Roby Albin, of St. Louis, for respondents.

SEDDON, C.: This is an appeal by the Public Service Commission of this state from a judgment of the circuit court of Cole county, made and entered on January 3, 1930, setting aside an order of the Public Service Commission, dated June 14, 1929 (P.U.R. 1929E, 129) dismissing the complaint of the Laundry, Inc., and the Overland Laundry Company, both Missouri corporations, against the St. Louis County Water Company, a Missouri public utility corporation, filed with the Public Service Commission on December 20, 1928, and remanding the said proceeding to the Public Service Commission for further action.

The proceeding was instituted upon a written complaint filed with the Public Service Commission by the Maplewood Laundry Company and the Overland Laundry Company, both incorporated entities, which written complaint charged and alleged, in substance and effect, that the complainants are and were, at all times herein referred to, engaged in a general

laundry business, washing, cleaning, starching, and ironing clothes, clothing, textile fabrics, and all and every article made therefrom; that they are engaged in said business on a very large scale, by the use of a large number of hired employees, and by the use of a large amount of machinery and equipment, such as is usually and generally used by large industries and other establishments of an industrial and manufacturing nature; that they are further engaged in those businesses which are incidental to washing and cleaning clothing and laundering the same, such as gathering soiled, unwearable, and unusable clothing and fabrics, cleaning, reclaiming, repairing and renewing the same, and delivering the same to their customers in the nature of clean and usable clothing and fabrics; that, in the conduct of complainants' said business, the principal article, ingredient, and material used is water, which is purchased by complainants from the St. Louis County Water Company; that complainants have been charged by the St. Louis County Water Company for said water so used, and are now being charged for said water so being used, at meter rates, which rates are the same as are charged individual users and consumers; that complainants have paid such water charges and rates under protest, for the reason that said St. Louis County Water Company has threatened to discontinue the supply of water furnished to complainants in the event that water is not paid for by complainants at the same meter rates as are charged individual consumers; that complainants use and have used, in carrying on their business, an amount of water in excess of 500,000 gallons per month, which water is purchased from the St. Louis County Water Company; that there is, and has been, in force and effect, within and for St. Louis county, a schedule of rates for water, which became effective on April 1, 1924, providing certain rates for water for industrial establishments, known as "manufacturers' rates," and which provide that consumption of water for manufacturing purposes amounting to 500,000 gallons per month shall be at the rate of 15 cents per thousand gallons, with a discount of 10 per cent for cash paid in ten days; that complainants have made application to the said St. Louis County Water Company for the said "manufacturers' rates," but the said water company has failed and refused to extend to complainants the said "manufacturers' rates"; that by extending said "manufacturers' rates" to certain users and consumers of water, and by withholding such rates from complainants, who use the same or larger amounts of water, sufficient to come within said class and schedule of rates, there results an unjust and unfair discrimination against complainants, which is illegal and unfair to complainants.

The relief sought by complainants, as prayed in their complaint, is that the Public Service Commission "make investigation of the facts and matters as set forth herein, and determine that the said manufacturers' rates shall be available to the petitioners (complainants), and for an order upon the said St. Louis County Water Company to extend to the petitioners the said manufacturers' rates, and to sell and to supply to petitioners water on

said basis and at said rate and upon said conditions; and that the said St. Louis County Water Company account to the petitioners for the moneys which petitioners have been compelled to pay under protest since April 1, 1924, and to refund to the petitioners the amounts paid, together with interest, in excess of the amount which petitioners should have paid had they been classified as manufacturers, and had they been extended the said manufacturers' rates; and the petitioners pray for such other and further relief in the premises as to the Public Service Commission may seem meet and proper."

In due time, and after proper notice to the St. Louis County Water Company, a hearing upon said complaint was had before the Public Service Commission at its principal office in Jefferson City, Cole county, Missouri, at which hearing the complainants and the St. Louis County Water Company appeared by counsel, and evidence was offered by the respective parties in support of, and in opposition to, the written complaint so filed. At such hearing, it appearing that the Laundry, Inc., a Missouri corporation, had succeeded to the corporate business, rights, and franchises of the Maplewood Laundry Company, the successor corporation was substituted as a complainant in the place and stead of Maplewood Laundry Company.

The evidence adduced upon the hearing before the Public Service Commission developed the following facts:

Since March 13, 1924, and effective from and after that date, there has been on file with the Public Service Commission a schedule of rates, filed by the St. Louis County Water Company, and ordered and approved by the Commission, for the furnishing of water to consumers "residing in incorporated cities and towns entering into franchise contracts with the company for water and fire service for periods of twenty years," which schedule of rates is as follows:

Use in Gallons per Quarter	Per M.
0 to 3,000 (first) 3,000 gal.	48⅔¢
3,000 to 9,000 (next) 6,000 gal.	45¢
9,000 to 36,000 (next) 27,000 gal.	37½¢
36,000 to 225,000 (next) 189,000 gal.	30¢
225,000 to 600,000 (next) 375,000 gal.	22½¢
All over 600,000	18¢

The plant and place of business of the Laundry, Inc., being located in the city of Maplewood, an incorporated city in St. Louis county, the said laundry corporation has been charged by the St. Louis County Water Company for all water consumed according to the aforestated schedule of rates.

A schedule of rates, filed by the St. Louis County Water Company with the Public Service Commission, and ordered and approved by the Commission, effective from and after March 13, 1924, for the furnishing of water to consumers in unincorporated communities "where there are no franchise contracts for water and fire hydrant service," is as follows:

Use in Gallons per Quarter	Per M.
0 to 3,000 (first) 3,000 gal.	65¢
3,000 to 9,000 (next) 6,000 gal.	60¢
9,000 to 36,000 (next) 27,000 gal.	50¢
36,000 to 225,000 (next) 189,000 gal.	40¢
225,000 to 600,000 (next) 375,000 gal.	30¢
All over 600,000	20¢

The plant and place of business of the Overland Laundry Company being located in Overland, an unincorporated community in St. Louis coun-

ty, the said laundry corporation has been charged by the St. Louis County Water Company for all water consumed according to the latter schedule of rates.

There is also on file with the Public Service Commission a schedule of rates, denominated "manufacturers' rates," filed by the St. Louis County Water Company, and ordered and approved by the Commission, dated March 13, 1924, and effective from and after that date, and which schedule is a restatement of the "manufacturers' rate" as it has existed in St. Louis county since the year 1910, as follows: "Consumption for manufacturing purposes, amounting to 500,000 gallons per month, shall be at the rate of 15 cents per thousand gallons, with a discount of 10 per cent for cash in ten days."

The evidence shows that the St. Louis County Water Company has extended the "manufacturers' rate" to ten of its customers or consumers of water, each of which customers employs a number of persons in the conduct and operation of its business, which is that of converting or manufacturing raw materials into finished commercial products. There is no positive evidence as to the number of persons employed by each of said ten customers enjoying the "manufacturers' rate," but the evidence shows that at least one of such customers was employing about thirty men at the time of the hearing. The reason for the "manufacturers' rate" was thus explained by an executive officer of the St. Louis County Water Company at the hearing: "The only reason for that rate was to put into effect (such rate) at a time that it was necessary to get a volume of business and a number of consumers in the county, if the (water) company was going to be able to continue to operate. . . . The excuse for making that rate was that these (manufacturing) concerns each employed several hundred men, and these men would, at that time or shortly after that time, come to the county to live and build homes and live out in the county, and that would bring the volume of business to the company very greatly in excess of the amount of water taken by the manufacturing concerns themselves, and these household consumers taking water at the block (or meter) schedule would pay the maximum rate for water, since they pay the highest rate of the block (meter) schedule, and, added to the manufacturers' rate or the amount of money received from the manufacturers, it would make up the loss, and possibly produce a profit on the total business."

The chief executive officer of the St. Louis County Water Company testified that the "manufacturers' rate" of 15 cents per thousand gallons of water, with a reduction of 10 per cent if paid in cash within ten days from the date of billing, makes the net rate charged the consumer enjoying the "manufacturers' rate" amount to the sum of 13½ cents per thousand gallons, which rate is less than the actual cost of production; that the cost of production, or operating expense, of the St. Louis County Water Company, based upon the aggregate amount of water sold to all consumers in the year 1925, was 22.26 cents per thousand gallons; that the cost of production, or operating expenses, in the year 1926 was 18.7 cents per thou-

sand gallons; and that the production cost of water furnished by the water company and sold in the year 1927 was 21.59 cents per thousand gallons.

Evidence was adduced by the water company that the city of Webster Groves used 301,763,000 gallons of water for municipal purposes in the year 1928, for which the municipality paid to the water company a meter rate or 21½ cents per thousand gallons; that the eleemosynary institutions situate in St. Louis county used 301,000,000 gallons of water in the year 1928, or approximately 25,000,000 gallons per month, for which such eleemosynary institutions paid the water company, under orders of the Public Service Commission, a meter rate of 21½ cents per thousand gallons, which rate was approximately the production cost to the water company, without allowance for interest or other investment charges; that the Laundry, Inc., paid to the water company in the year 1928 an average rate, based upon the existing schedule of rates applicable to the individual consumer in incorporated cities and towns, of 19.47 cents per thousand gallons of water used; and that the Overland Laundry Company paid to the water company in the year 1928 an average rate, based upon the existing schedule of rates applicable to the individual consumer in unincorporated communities, of 26 cents per thousand gallons of water used.

The evidence further tended to show that each complainant laundry company was using, and had been using for some time prior to the filing of their complaint, in excess of 500,000 gallons of water per month; that they were billed and charged by the water company for water used on the basis of the existing schedule of rates applicable to the individual consumer of water, and not upon the existing schedule of rates denominated "manufacturers' rates"; that each of the complainants had made application to the water company to be placed under the scheduled "manufacturers' rate," but that the water company had refused to so classify complainants; that the water purchased by complainants was used for drinking, sanitary purposes, the manufacture of steam power, and for washing or laundering clothing and other fabrics; that the much greater part of all water used by complainants was used for laundering clothing; that the Laundry, Inc., employs an average of eighty-nine employees, consisting of seventeen men and seventy-two women, thirty-two of which employees reside within the territory served by the St. Louis County Water Company; and that the Overland Laundry Company employs an average of forty-three employees, about 75 per cent of which number are women, and the balance are men, all of which employees reside in St. Louis county and in the vicinity of the laundry plant.

The evidence further shows that the laundry plants of complainants are operated daily, except Sunday, during the usual and ordinary hours of the business day, between the hours of 7:30 o'clock in the morning and 5 o'clock in the evening, and that water is used uniformly throughout those hours of operation; that is to say, the amount or quantity of water used is uniform for each hour of the business day during which complainants' laundry plants are in operation. There is

no evidence herein that the water company is required, by reason of the nature and necessities of the complainants' business, to furnish and deliver water to complainants at unusual hours of the day, or in unusual or in variable quantities, or under different pressure, or under operative conditions other than the water company furnishes and delivers water to those users and consumers enjoying the benefit of the "manufacturers' rate."

On June 14, 1929 (P.U.R.1929E, 129) a written report or decision was made and filed by the Public Service Commission, wherein the Commission reached the conclusion that "the complainants herein are not entitled to be classified as manufacturers, and that the complaint should be dismissed." It was, therefore, ordered of record by the Commission "that the complaint of the Laundry, Inc., and the Overland Laundry Company against the St. Louis County Water Company be and the same is hereby dismissed."

In due time, the complainants filed with the Public Service Commission a written application for a rehearing, setting forth specifically the grounds upon which the complainants deem the decision and order of the Commission to be unlawful, unjust, and unreasonable. On June 28, 1929, the Commission made and entered of record an order overruling and denying complainants' application for a rehearing. Thereafter, and in due time, the complainants applied to the circuit court of Cole county for a writ of certiorari or review, which writ was duly granted by the circuit court of Cole county. The proceeding was duly heard by the circuit court of Cole county, upon the record and evidence as certified by the Public Service Commission, whereupon the circuit court of Cole county, on January 3, 1930, made and entered the following judgment: "The order of the Public Service Commission in refusing to permit the (complaining) laundry companies to be classified under the class of manufacturers is hereby set aside, and the cause is remanded to the Commission for further proceedings, the opinion of the court being that the (complaining) laundries, under the law, should be placed in the classification with manufacturers."

After an unavailing motion for a new trial, the Public Service Commission was granted an appeal to this court from the judgment of the circuit court.

The single issue, or question, involved in the instant proceeding, is thus clearly and pointedly stated by complainants' counsel at the hearing before the Public Service Commission: "I represent two laundries in St. Louis county, the Overland Laundry Company, which is incorporated, and the Laundry, Inc., also a corporation, and successor to the Maplewood Laundry Company. These laundries admittedly use more than 500,000 gallons of water per month, but they, however, have been billed at the rate of the ordinary consumer, and it is our contention that these laundries, being industrial enterprises and carrying on a business in which they use large quantities of water for industrial purposes, should be classified as manufacturers under this provision of the (scheduled) rates so as to receive the manufacturers' rate."

The position contended for by the St. Louis County Water Company in

opposing the complaint is thus clearly stated by its chief executive officer at the hearing before the Public Service Commission: "The rate asked for by the laundries, the manufacturers' rate, has been in force and effect for a considerable number of years; in fact, the time dates back to the time when the water company was still operating at a deficit, without profit on its operations, and to the time when it was necessary to get a volume of business to continue in operation. This rate, referred to as the manufacturers' rate, was not intended, and never has been, and was never intended to be, an industrial rate, but only a manufacturers' rate, for the particular purpose to build up the sales of the water company to the volume that would eventually make the operations of the company profitable. The rate was put into effect to induce the Wagner Electric Manufacturing Company and the Fulton Iron Works Company to locate their plants in St. Louis county and take water from this company, with the idea that the manufacturer employs hundreds of men and would bring sufficient business with it, which, paid for at the highest rate of the block (meter) schedule, would give a large volume of business; so that, while there was no profit in the manufacturers' rate, or profit on the water sold to the manufacturers, the other business brought to the water company, by reason of the location of the manufacturing plants in the county, would eventually make it a paying proposition. At the time it (the manufacturers' rate) was put into effect it wasn't a paying (profitable) rate, but it was hoped that it would eventually come to the point that, if there was no profit, there would at least be no loss on these sales; but the war intervened, and raised the cost of operations, so at no time has the sale of water at the net price of 13½ cents per thousand gallons been a profitable sale to the water company, for which reason the company has been rather slow to extend this manufacturers' rate, or to call it an industrial rate, since it was not put into effect, and never considered in administering it, as an industrial rate. The costs of the water company, as shown by the operating expenses of the company for the years that the reports are on file in the office of this Commission, showing the cost of operating, are very much in excess of the 13½ cents (net) per thousand gallons received for the sales of water, without any allowance whatever for return on the investment."

[1] As we view the written complaint of the two laundry corporations, filed with the Public Service Commission as the basis and foundation of this proceeding, it is not a complaint "as to . . . the purity, pressure, or *price* of water," within the provisions and meaning of § 10490, Rev. Stat. Mo. 1919; or is the complaint one "as to the *reasonableness* of any rates or charges of any . . . *water* . . . *corporation*," within the provisions and meaning of § 10518, Rev. Stat. Mo. 1919. The complainants are not complaining against the *price* of water, as such price has been fixed and established by the various schedules of rates filed by the water company and approved by the Public Service Commission; or are the complainants challenging the *reasonableness* of any such rates or charges of the water

company as fixed and established by the various schedules of rates on file with the Public Service Commission. Hence the written complaint herein is not such as must be signed by "not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of water," in order to be entertained by the Public Service Commission, and in order to confer jurisdiction of the complaint in the Commission, within the requrements of the aforecited sections of the statute, known as the Public Service Commission Law. Rather do we view the complaint herein as one over which the Public Service Commission properly has jurisdiction by virtue of the first clause of § 10518, Rev. Stat. Mo. 1919, which provides: "Complaint may be made . . . by *any* (i. e., by one, or by more than one) corporation or person . . . , by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law. . . ." (Parentheses and italics ours.) The gist and gravaman of the complaint filed herein is that the St. Louis County Water Company, by its failure and refusal to classify the complainants as manufacturers, or rather to extend to complainants the scheduled "manufacturers' rate," has thereby wrongfully, unlawfully, unjustly, and unreasonably discriminated against complainants, in favor of other consumers and users of water who are similarly situated, under a regulation or charge theretofore established or fixed by the St. Louis County Water Company, in violation of a rule of the common law, and of the statutory law of this state. Such was unquestionably the view of the Public Service Commission, inasmuch as the decision or opinion of the Commission clearly indicates that the Commission did not dismiss the complaint for want of jurisdiction thereover, or because of insufficiency in the number of complainants, or in the number of the signers of the written complaint, but for the expressed and single reason that "the Commission is of the opinion that the complainants herein are not entitled to be classified as manufacturers." The action of the Public Service Commission in retaining and exercising jurisdiction over the complaint filed herein is in entire accord with previous announcements and rulings of the Commission upon the subject. Cole v. Ft. Scott & N. Light, Heat, Water & P. Co. (1913) 1 Mo. P. S. C. R. 130, 139. We are of the opinion that the Public Service Commission had jurisdiction over the complaint filed herein, and that, by reason of the derivative jurisdiction conferred upon this court by § 10525, Rev. Stat. Mo. 1919, the order of the Commission, and the judgment of the circuit court of Cole county, upon the single issue involved, are properly reviewable by this court.

The Public Service Commission dismissed the complaint of the two laundry corporations herein because the Commission was of the opinion that the nature or function of complainants' business, which is that of laundering soiled clothing and fabrics, does not bring the complainants within the technical and precise definition

of the term "manufacturing purposes," as such term is used in the schedule of rates denominated "manufacturers' rates," as filed by the St. Louis County Water Company and approved by the Public Service Commission. It is urged by the appellant, Public Service Commission, that, "in the common understanding, the function of a laundry is to make clothes clean, rather than to make (i. e., *manufacture)* clean clothes," and that the business of a laundry is at most a mere service, and not in any sense a manufacturing process whereby raw or partly fashioned materials are completely or partly changed and converted into finished commercial products. The appellant, in support of its decision and order herein, cites a number of judicial decisions, wherein courts of other and foreign jurisdictions have ruled that a laundry is not a manufacturing establishment. We have carefully read and analyzed each and all of the several juristic decisions cited by the appellant. Most, if not all, of the decisions cited by appellant involved the construction and application of a legislative act or statute, or of a constitutional provision, which, by its precise language and terms, included "manufacturers," or "manufacturing establishments," but which did not include "laundries" by name or designation. Several of such cited decisions involved the construction and application of statutes, commonly called "antitrust statutes," which are aimed at pools, trusts, and conspiracies having for their purpose the restraint, control, and combination of the business of manufacture and the sale of manufactured merchandise, and the consequent enhancement of the price of such manufactured merchandise to the ultimate purchaser or consumer. In all such decisions the courts have pointedly and expressly bottomed their decisions upon the ground that the statute under construction is highly penal, and as such must be strictly construed, so as not to include, by implication or by mere construction, a class of business, such as a laundry, not expressly mentioned in the legislative act. Other decisions cited by appellant involved the construction and application of the Federal Bankruptcy Act (11 USCA), which confers upon the Federal courts the jurisdiction to adjudicate corporations to be involuntary bankrupts only when they are "engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits," and wherein it was held that a laundry corporation, operating and conducting the usual and ordinary business of a laundry, does not fall within any of the prescribed classifications of the Bankruptcy Act. The ground of such decisions is bottomed upon the fact that the Bankruptcy Act purposes to take from the classified corporation, involuntarily and without its consent, all control over its corporate property and affairs, and hence such corporation must "be well defined in the law" in order to bring it within the provisions of the Bankruptcy Act; which is only another way of holding that the Bankruptcy Act must be given a strict, rather than a liberal, construction, and, unless the business of a laundry corporation clearly and certainly brings it within the prescribed classifications of the Bankruptcy Act, the courts have no jurisdiction to adjudicate a laundry cor-

poration to be an involuntary bankrupt. Other decisions cited by appellant involved the construction and application of statutes exempting manufacturing corporations from taxation, or statutes which give to employees of any manufacturing corporation or establishment a paramount lien for their labor and services against and upon the property of such manufacturing corporation or establishment used in the conduct of its business, or constitutional or statutory provisions exempting manufacturing and mechanical corporations from corporate stock liability. It is the general and universal holding of the courts that such statutes or constitutional provisions must be given a strict construction, so as to include only such corporations as are expressly and specifically mentioned therein. None of the judicial decisions cited by appellant involved statutes prescribing or regulating the rates to be charged by public utility corporations, or construed the applicability of rate schedules filed by public utility corporations with public officers or administrative commissions, pursuant to the requirements of legislative enactments relating to public utilities.

[2] Unlike the character and nature of the various statutes and constitutional provisions involved in the several decisions cited by appellant, the Public Service Commission Law of our own state has been uniformly held and recognized by this court to be a remedial statute, which is bottomed on, and is referable to, the police power of the state, and under well-settled legal principles, as well as by reason of the precise language of the Public Service Commission Act itself, is to be "liberally construed with a view to the public welfare, efficient facilities, and substantial justice between patrons and public utilities." Section 10538, Rev. Stat. Mo. 1919; State ex rel. Sedalia v. Public Service Commission (1918) 275 Mo. 201, 206, P.U.R.1919C, 507, 204 S. W. 497; State ex rel. Barker v. Kansas City Gas Co. (1914) 254 Mo. 515, 535, 163 S. W. 854. The rule of liberal construction thus uniformly accorded by this court to the Public Service Commission Law is consonant with the universal rule applicable to similar remedial statutes, which is to the effect that "laws enacted in the interest of the public welfare or convenience should be liberally construed, with a view to promote the object in the mind of the legislature, by suppressing the mischiefs and advancing the remedy." 36 Cyc. 1173–1175.

[3, 4] The Public Service Commission is an administrative agency or committee of the legislature, and as such is vested with only such powers as are conferred upon it by the Public Service Commission Law, by which it was created. Atchison, T. & S. F. R. Co. v. Public Service Commission (Mo.) P.U.R.1917C, 1005, 192 S. W. 460, 462; Lusk v. Atkinson (1916) 268 Mo. 109, 116, 186 S. W. 703; Public Service Commission v. St. Louis-S. F. R. Co. (1923) 301 Mo. 157, 165, P.U.R.1924B, 690, 256 S. W. 226; State ex rel. Kansas City Terminal R. Co. v. Public Service Commission (1925) 308 Mo. 359, 372, P.U.R.1926A, 210, 272 S. W. 957. Among the various powers conferred upon the Public Service Commission by the Public Service Commission Law of our state is the "pow-

er to require every . . . water corporation . . . to file with the Commission and to print and keep open to public inspection schedules showing all rates and charges made, established, or enforced or to be charged or enforced." Section 10478, par. 12, Rev. Stat. Mo. 1919. Pursuant thereto the St. Louis County Water Company filed with the Public Service Commission, and the Public Service Commission ordered and approved, certain schedules of rates, among them the schedule denominated "manufacturers' rates," which prescribed or fixed a flat rate of 15 cents per thousand gallons, with a discount of 10 per cent for cash paid in ten days, where consumption of water for manufacturing purposes amounted to 500,000 gallons per month. Upon the filing of such rate scheduled by the water company, and its approval by the Public Service Commission, the schedule became the equivalent of a legislative enactment or law prescribing and fixing the rate for water furnished by the St. Louis County Water Company and used or consumed for manufacturing purposes in the minimum quantity of at least 500,000 gallons per month. The Public Service Commission, by its decision and order made and entered of record herein, has given a strict and narrow construction to the term "manufacturing purposes" as used in such rate schedule, so as to exclude the complainants from the enjoyment and benefit of the rate prescribed therein, because (the Public Service Commission opines) complainants' laundry business does not fall technically within the category of a manufacturing establishment. We are of the opinion that the construction given to such so-called manufacturers' rate schedule by the Public Service Commission is too narrow, and that such manufacturers' rate schedule should be given a liberal, rather than a strict, construction, bearing in mind that legislative enactments prescribing and fixing rates to be charged for public utilities, or which empower an administrative agency or Commission of the legislature to prescribe and fix such rates being referable to the police power of the state, and being enacted in the interest of the public welfare or convenience, are highly remedial, and, therefore, are to be liberally construed so as to promote the object in the mind of the legislature.

[5] Since the regulation and fixing of rates or charges for public utilities, and the classification of the users or consumers to whom such rates or charges shall be applicable is primarily a legislative function, it follows that the Public Service Commission, which is purely and simply an administrative agency or arm of the legislature, is exercising a legislative or quasi legislative function in the performance of those powers which have been conferred upon it by the Public Service Commission Law, among which are the powers to regulate and fix rates or charges for public utilities, and to classify those users or consumers to whom such rates or charges shall be applicable. Such classification, in order to be valid, must comport with the rule or principle of sound legislative classification. The rule is thus clearly stated by this court en banc in State ex inf. Barrett ex rel. Bradshaw v. Hedrick (1922) 294 Mo. 21, 74, 241 S. W. 402, 420: "The basis of sound

legislative classification is similarity of situation or condition with respect to the feature which renders the law appropriate and applicable. A law may not include less than all who are similarly situated. If it does, it is special, and, therefore, invalid, because it omits a part of those which in the nature of things the reason of the law includes. The question is not whether, considering all the circumstances which exist, the legislature might not constitutionally make a law which would include a larger class. On the contrary, it is whether it appears beyond a reasonable doubt that there are no distinctive circumstances appertaining to the class with respect to which it has legislated which reasonably justify its action in restricting the operation of the law to the persons, objects, or places to which the law is made applicable."

Again, in Ex parte French (1926) 315 Mo. 75, 82, 285 S. W. 513, 515, 47 A.L.R. 688, this court en banc thus announced the rule of legislative classification: "A classification for legislative purposes must rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed. It cannot be an arbitrary classification. The legislature may pass laws applicable to a particular class of individuals, but such laws must bear equally upon all individuals coming naturally within the class. The legislature may not classify by characteristics or qualities which might distinguish individuals unless that distinction applies to the particular matter under consideration."

[6] It is significant, that, in enacting the Public Service Commission Law, the legislature, apparently having in mind the aforestated rule or principle of sound legislative classification put into the Public Service Commission Law the following express provisions and requirements: "No . . . water corporation or municipality shall directly or indirectly by any special rate, . . . or other device or method, charge, demand, collect, or receive from any person or corporation a greater or less compensation for . . . water or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects, or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions." And, further: "No . . . water corporation or municipality shall make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation, or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsover." Section 10477 (2, 3), Rev. Stat. Mo. 1919.

The Public Service Commission of this state had a somewhat similar question to deal with and determine upon the complaint of the Civic League v. St. Louis (1916) 4 Mo. P. S. C. R. 412, 446, P.U.R.1917B, 576, 608, wherein complaint was made against a schedule of water rates filed with the Commission by the city of

St. Louis, acting in its private or proprietary capacity as the owner of a municipal water plant, and as a distributor of water to users and consumers within the municipality. The schedule of rates therein complained against provided a different and less rate or charge for water used "for purely manufacturing purposes" than the rate charged for general use. The municipality sought to justify the so-called manufacturers' rate upon the ground that such rate was established to encourage the location of manufacturing plants within the city of St. Louis. The Public Service Commission found and held that the manufacturers' rate was discriminatory, and that the classification provided by the rate schedule was unreasonable and unjust. The opinion or decision of the Public Service Commission was written by Commissioner Eugene McQuillin, an eminent Missouri lawyer and a distinguished text-writer on a wide variety of legal subjects, who said in the course of the opinion: "In the Missouri act (Public Service Commission Law), supervision and regulation seek to require all public utilities operating in the state, whether owned by private persons, corporations, or municipalities, not only to serve the public at reasonable rates or charges, but to require them also to serve the public efficiently and without unjust discrimination. The consensus of opinion everywhere is that such requirements are imperatively demanded by modern industrial conditions. Of course, as observed by the Supreme Court of the United States in a leading case, such equality of rights does not prevent differences in the modes and kinds of service and different charges based thereon. Western U. Teleg. Co. v. Call Pub. Co. (1901) 181 U. S. 92, 100, 45 L. ed. 765, 21 Sup. Ct. Rep. 561. In brief, in charges for service or in rate making, reasonable classification may be adopted. . . . However, laws designed to enforce equality of service and charges and prevent unjust discrimination, as the Missouri act, require the same charge for doing a like and contemporaneous service (e. g., supplying water) under the same or substantially similar circumstances or conditions. To impart this idea more completely, or to amplify, our law in express terms forbids granting undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subjecting any person, corporation, or locality, or any particular description of service, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. (Mo. P. S. C. Law, § 68.) In brief, rates or charges to be valid must not be unjust, unreasonable, unjustly discriminatory, or unduly preferential. Our statute demands reasonable and nondiscriminatory rates. . . . Accordingly, even at common law, it is not admissible for a public service company to demand a different rate, charge, or hire from various persons for an identical kind of service under identical conditions. Such partiality cannot square with the obligations of public employment. The public duty must be discharged for the equal benefit of all, and obviously to permit discrimination or inequality in the service or charges is to ignore the public obligation. Messenger v. Penn-

sylvania R. Co. (1873) 36 N. J. L. 407, 13 Am. Rep. 457; Id. (1874) 37 N. J. L. 531, 18 Am. Rep. 754. The common right of all involves the obligation to give equal rights to all for the same service. Fitzgerald v. Grand Trunk R. Co. (1891) 63 Vt. 169, 22 Atl. 76, 13 L.R.A. 70. The services must be open to all on equal terms. Discrimination is opposed to sound public policy. Scofield v. Lake Shore & M. S. R. Co. (1885) 43 Ohio St. 571, 3 N. E. 907, 54 Am. Rep. 846. The common law today forbids all discrimination between two applicants who ask the same service. 2 Wyman, Public Service Corporations, § 1290. . . . Thus the principle of equality designed to be enforced by legislation and judicial decision forbids any difference in charge which is not based upon difference of service, and even when based upon difference of service must have some reasonable relation to the amount of difference, and cannot be so great as to produce unjust discrimination. Western U. Teleg. Co. v. Call Pub. Co. *supra*. . . . While the principles of the common law are operative, except so far as they have been modified by Constitution or legislation (Rev. Stat. Mo. 1909, § 8047; Duke v. Harper (1877) 66 Mo. 51, 27 Am. Rep. 314; Reaume v. Chambers (1855) 22 Mo. 36; Lindell v. McNair (1838) 4 Mo. 380), whatever may have been the common-law rule relating to unjust discrimination, our legislation now controls and is to be construed and applied according to its spirit in the light of the unsatisfactory conditions prevailing with respect to the service and rates of public utilities as above briefly outlined prior to its enactment. . . . The Commission has had occasion to consider carefully the policy of the law relating to discrimination in rates on the part of the public service companies of various kinds, and has held invariably that any inequality of service or charges and unjust discriminations in whatever form practiced fall within the condemnation of the Public Service Commission Act; that all unjust discriminations respecting rates or charges are in violation of public duty, contrary to the common law, and against sound public policy; and that statutes forbidding unjust discriminations of whatever character are merely declaratory of the common-law rule, which is founded on public policy and requires one engaged in a public calling to charge a reasonable and uniform price or rate to all persons for the same service rendered under the same or substantially similar circumstances or conditions. . . . Our conclusion, therefore, is that the schedule of rates, providing a less charge for water for purely manufacturing purposes than for general use, is plainly unjust discrimination under the well-settled rule of the common law, as well as under the Public Service Commission Act, which is merely declaratory of the common-law rule, because it distinctly appears that the classification therein is unreasonable and unjust."

Speaking to the subject of unjust discrimination by public utility corporations in respect to rates and service, the United States Supreme Court, through Mr. Justice Brewer, thus announced in Western U. Teleg. Co. v. Call Pub. Co. (1901) 181 U. S. 92, 100, 45 L. ed. 765, 21 Sup. Ct. Rep.

561, 564: "All individuals have equal rights both in respect to service and charges. Of course, such equality of right does not prevent differences in the modes and kinds of service and different charges based thereon. There is no cast iron line of uniformity which prevents a charge from being above or below a particular sum, or requires that the service shall be exactly along the same lines. But that principle of equality does forbid any difference in charge which is not based upon difference in service, and, even when based upon difference of service, must have some reasonable relation to the amount of difference, and cannot be so great as to produce an unjust discrimination."

It is undisputable under the evidence herein, as adduced at the hearing of the complaint before the Public Service Commission, that there is no dissimilarity or difference in the service of furnishing and supplying water to the ten customers of the water company who enjoy the benefit of the rate schedule denominated "manufacturers' rates" and the service of furnishing and supplying water to the complainants herein. The sole reason or ground suggested by the water company in justification of the manufacturers' rate schedule, and in justification of the single and select classification of water users claimed to be made thereby, is that manufacturing establishments ordinarily employ a considerable number of employees, who are likely to be or to become customers of the water company as individual users of water furnished by the water company under the schedules of rates applicable to the domestic, or household, customer and user of water. Such a classification of water users obviously has no reasonable foundation bottomed upon any dissimilarity or difference in service or operative conditions, but rests solely upon a possible pecuniary advantage to the water company, in which the various customers and patrons of the water company, at most, are only indirectly and remotely concerned. Furthermore, it would seem to appear under all the evidence herein that, upon the single reason or ground of classification asserted by the water company, the complainants, as the employers of a considerable number of individuals who are likely to be or to become users and consumers of water furnished by the water company, stand upon as favorable a footing as do other employers of labor who enjoy, and to whom is extended, the benefit of the so-called manufacturers' rate schedule. It, therefore, appears to our minds that the strict construction and application given to the manufacturers' rate schedule by the Public Service Commission necessarily results in an unjust and unfair discrimination against the complainants herein, who are users of water under the same or substantially similar and contemporaneous service conditions as are applicable to those users of water enjoying the benefit of the manufacturers' rate schedule, in contravention of both the letter and the spirit of the Public Service Commission Law, which is merely declarative of the rule of the common law bearing upon the subject of unjust discrimination in rates and service. The judgment of the circuit court of Cole county, setting aside the order of the Public Service Commission herein and re-

manding the proceeding to the Commission for further action, was right, and, therefore, must be affirmed.

[7] It is observable, in passing, that the complainants herein pray the Public Service Commission to order and require the St. Louis County Water Company to account to complainants for the moneys in excess of the manufacturers' rate which complainants, under protest, have been compelled to pay to the water company since April 1, 1924, and to refund to the complainants the excess moneys so paid, together with interest thereon. The pecuniary relief so prayed by complainants calls for the exercise of a judicial function, by the entry of a judgment or order for the recovery of money, which function is exclusively exercisable only by the judicial branch or department of our state government. The Public Service Commission is an administrative body only, and not a court, and hence the Commission has no power to exercise or perform a judicial function, or to promulgate an order requiring a pecuniary reparation or refund. Lusk v. Atkinson (1916) 268 Mo. 109, 116, 186 S. W. 703; State ex rel. Missouri P. R. Co. v. Public Service Commission (1923) 303 Mo. 212, 219, P.U.R.1924D, 162, 259 S. W. 445; State ex rel. Jenkins v. Brown (1929) 323 Mo. 382, P.U.R.1930B, 512, 19 S. W. (2d) 484, 486. It, therefore, follows that the Public Service Commission has no power or authority to determine or to award the pecuniary relief prayed by complainants herein.

For the reasons above stated, the judgment of the circuit court of Cole county herein must be affirmed, and it is so ordered.

Ellison and Ferguson, CC., concur.

PER CURIAM: The foregoing opinion by Seddon, C., is adopted as the opinion of the court.

All of the Judges concur.

ALABAMA PUBLIC SERVICE COMMISSION

Re Alabama Water Service Company

[Non-Docket No. 707.]

Rates — Reasonableness — Ability to pay — Economic depression.

As the result of a prolonged economic depression materially affecting the ability of a considerable portion of the residents in a certain community to pay newly increased water rates, which had previously been approved by the Commission, the water company, upon its voluntary submission to a request of the Commission, was ordered to place into effect its former rates until such time as the new rates could be adopted without working too great a hardship upon the community.

[February 21, 1931.]

PETITION *of certain water consumers against the immediate adoption of increased water rates; increased rates suspended.*

By the COMMISSION: On, to wit, February 14, 1931, the Commission received a petition signed by some two hundred citizens of Phenix City, Alabama, requesting that the present water rates of Alabama Water Service Company in the Girard section of Phenix City be reduced to the previous basis of rates which became effective October 1, 1926, including the previous minimum and flat charge of $1 per month, as applicable under said previous rate basis.

The petition states that: "A majority of the residents of the Girard section of Phenix City belong to the working class and are unable to pay the advanced rate, which was put into effect on January 1, 1931."

In addition to the facts stated in such petition, the Commission received information through the mayor of Phenix City, Hon. W. E. Sherrer, and through the representatives of Russell county in the legislature, Hon. George G. Wallace and Hon. Charles T. Clayton, to the effect that there has been extremely little improvement, if any, in the employment conditions in Phenix City, particularly among the citizens of that part of Phenix City who are customers of this company.

In the year 1930, the company filed a petition before the Commission to make some increases in its rates so as to put the company's rates on the same level with the rates of the municipal operation in a part of Phenix City, and submitted considerable evidence in support of such application. There were two hearings of this application, one at the Commission's office and a later hearing in Phenix City.

The Commission gave careful consideration to the evidence in the case and found that, under the evidence and under the law, the company was entitled to some increase of rates. The order was not issued until several months after the last hearing for the reason that the Commission was impressed with the unusual conditions which appeared to exist in this community, namely: that a large percentage of the customers appeared to be workers in the textile and other plants nearby; that many of them were out of employment and that those who had any employment were on short time. We withheld making the order for several months with the hope that this condition would improve and at the time our order was issued, we felt that this condition would soon be substantially bettered.

Promptly after receipt of the petition above referred to, on February 14, 1931, the Commission advised the company of the filing of said petition, by our letter of February 14, 1931, in which the facts above stated were set out, and which letter further stated as follows:

"Conditions here are peculiar and unusual and probably do not exist to the same extent in any other community in the state. While the Commission, under the law and the evidence before it, probably could not compel a reduction of the rates, at the same time, we do feel that the situation here is such as to strongly appeal to the company, as it does to the Commission, and since the operation in a single unit, standing upon its own basis, and to be treated with proper consideration for the peculiar circumstances and conditions surrounding it, we think that the company may, with-

out prejudice to its general situation, grant the concession asked for by the citizens and their mayor, to be extended until there is some substantial improvement in this situation.

"The Commission, therefore, requests that you give this situation your prompt and sympathetic consideration, and advise us as soon as you can of your attitude in the matter."

In response to our letter of February 14th, the company has advised us by its letter of February 18th, as follows:

"The Alabama Water Service Company feels that the present rates which were recently approved for it are just and reasonable, and that they should not be decreased or abandoned. It is the wish of this company to comply as nearly as possible with the requests and opinions of the Public Service Commission, and if the Commission feels that local conditions are such that the present rates should be placed upon the old basis and will issue an order to this effect, suspending the present rates and placing into effect the old rates until such time as the community is in a position to pay them without a hardship, we will not appeal from such an order."

"We will be glad to hear from you upon this matter, and upon receipt of an order covering it will immediately place such order into effect."

The Commission commends the company for making a concession in its rates on account of the unusual conditions applying in this community. In doing this, the company, of course, does not waive its right to apply in the future for a revision of its rates to such basis as it may be entitled under the law, whenever conditions have improved to such degree as will enable the company's customers to pay reasonable rates without undue hardship upon them.

The premises considered, it is ordered by the Commission that the schedule of rates which was in effect prior to that schedule heretofore approved by the Commission and placed in effect on January 1, 1931, be reinstated, the said previous schedule of rates to take effect on and after March 1, 1931.

The Commission's report, above set out, is referred to and made a part of this order.

ALABAMA PUBLIC SERVICE COMMISSION

Alabama Public Service Commission

v.

Coffeeville Bridge Company

[Docket No. 6083.]

Public utilities — Toll bridge — Security issues.

1. A toll bridge is a public utility within the meaning of § 9742 of the

Code of Alabama of 1923, and, therefore, subject to the jurisdiction of the Commission over the issuance of all securities of public utilities, p. 397.

Security issues — Powers of the Commission — Toll bridge.

2. A toll bridge company, issuing securities without authority of the Commission, was held to have violated a state law, and the sale of such securities was forbidden within the state, p. 397.

[February 10, 1931.]

CITATION *to a toll bridge company to show cause why it should issue securities without the approval of the state Commission; sale of securities forbidden.*

APPEARANCES: J. W. Brassell, representing P. H. Gilmore, Silas; G. P. Lane, President, representing Coffeeville Bridge Company.

By the COMMISSION: On, to wit, December 29, 1930, and just prior thereto, the Commission had received information to the effect that Coffeeville Bridge Company, a corporation, herein styled the respondent, organized to own, operate, lease, and control a toll bridge within the state of Alabama, was offering for sale and selling its securities within the state of Alabama without first having complied with the provisions of §§ 9744 *et seq.* of the Code of Alabama of 1923.

Thereupon the Commission issued its citation of December 29, 1930, to respondent to appear before the Commission at its office on Monday, January 12, 1931, to show cause why respondent should not first obtain authority from the Commission as required by law before issuing and selling any of its said stock or securities within the state of Alabama.

In answer to such citation the respondent appeared at said hearing by its president, G. P. Lane, and its vice president, T. Angus MacEwan.

The evidence regarded as material to the present inquiry received by the Commission at this hearing is substantially as follows: On to wit, August 25, 1930, the said Lan, MacEwan and E. N. Hamill organized the Coffeeville Bridge Company as a corporation under the laws of Alabama, its corporate charter being filed in the office of the judge of probate of Jefferson county, Alabama, in Volume 33, p. 226 of incorporation records, on said date.

In addition to those general powers given to commercial corporations generally, the charter gives to respondent power as follows: "to build, construct, maintain, conduct, and operate a toll bridge or toll bridges over and across the Tombigbee river at or near Coffeeville, Alabama, and over such other streams and at such other places as it may see fit."

The principal place of business and office of the corporation is stated to be Birmingham, Jefferson county, Alabama.

The amount of the authorized capital stock of the corporation is 2,000

shares of no par value. The amount of capital stock with which the corporation shall commence business is stated to be the proceeds of the sale of 2,000 shares of no par value of the value of $2,000.

The said Lane, MacEwan, and Hamill together subscribed for 2,000 shares of stock, which said subscription is to be paid for by conveying and transferring or causing to be conveyed and transferred to said corporation that certain right, privilege, or franchise granted to J. E. Robinson by Act of Congress approved March 2, 1929, the said subscribers receiving shares as follows:

G. P. Lane	1,000 shares
T. A. MacEwan	999 shares
E. N. Hamill	1 share

G. P. Lane as president of respondent corporation testified that he and MacEwan had purchased from J. E. Robinson the permit granted to Robinson by Act of Congress approved March 2, 1929, to build a bridge over the Tombigbee river at or near Coffeeville. He further testified that the 1,999 shares of stock issued to him and MacEwan were in consideration of the transfer of this permit to the corporation.

At the hearing P. H. Gilmore appeared in person and by his attorney, J. W. Brassell, to advise the Commission that the said Gilmore claims to be the owner of an undivided one-half interest in the franchise or right granted by Act of Congress approved March 2, 1929, to J. E. Robinson, his heirs, and assigns, to construct a bridge over the Tombigbee river at or near Coffeeville.

In response to requests made upon the secretary of respondent, the company's stock book was produced at the hearing and the stubs thereof showing issuance of certificate for shares of capital stock were made a part of the evidence in the case. Such stock book shows the issuance of 40 certificates of stock, ranging in number of shares for each certificate from one share issued to Mrs. A. R. Anderson of Healing Springs, to 30 shares issued to T. A. Wilson, of Thomasville. The only certificate shown by the stock book to have been issued for more than 30 shares at the date of the hearing, was certificate 24 for 40 shares issued to G. P. Lane. Most of the certificates from 1 to 40 which had been issued up to the date of the hearing were for 5 shares or less. The stubs show in most of these instances that such certificates issued for small numbers of shares were endorsed on the stub as transferred from G. P. Lane. The stock book shows additional blank and unused certificates at the date of the hearing, numbered from 41 to 100 inclusive. G. P. Lane testified that the company had no other stock book except the one in evidence before the Commission. Lane was asked at the hearing the following question:

Q. What did you state to these people when you solicited their purchase of the stock?

A. Well, there is nothing that I stated, except I invited them to come in and be in the ownership of the bridge and in partnership with my company. I showed them the amount of the bond issue, etc., and the expense on the bond issue. When asked what the amount of the bond issue was to be, he answered that it was to be

about $200,000, the estimate on the bridge.

Lane further testified that along in September, 1930, he started selling this stock at $10 per share; that the corporation has no other assets at this time, except its interest in the permit granted by Congress, transferred to the corporation as aforesaid.

The instrument purporting to convey such permit by J. E. Robinson to G. P. Lane and T. A. MacEwan bears date of August 5, 1930.

P. H. Gilmore, who appeared at the hearing as above stated, offered in evidence an instrument signed J. E. Robinson, dated April 25, 1930, purporting to convey a one-half interest in and to such permit, for the consideration of $2,500. This instrument in favor of Gilmore was recorded on May 1, 1930, in Choctaw county and in Clarke county, Alabama. The instrument in favor of Lane and MacEwan does not appear to have been filed for record.

When Lane offered to submit testimony against the validity of the instrument in favor of Gilmore, he was advised that the Commission had no authority to settle any such dispute and that such issue would have to be submitted to the court.

There was other testimony offered, but it is not deemed necessary to review same here. A copy of the respondent's corporate charter was made a part of this record.

[1, 2] At the conclusion of the hearing, after consideration of the evidence by the entire Commission, it was the opinion of the Commission that the sale of stock in this corporation, as shown by the evidence to have been made, was in violation of the statute requiring every utility to obtain approval of its issue and sale of securities before the securities may lawfully be sold to the public.

A toll bridge is a utility under § 9742 of the Code of Alabama of 1923. The Commission advised the respondent, through its said President and vice president at the hearing that the respondent's securities must not be further issued and sold to the public until respondent had complied with the provisions of law as contained in § 9744 *et seq.* of Code of Alabama of 1923.

An appropriate order is herewith entered.

Order

The Commission's report is issued on this date, setting out its conclusions upon the evidence, and such report is referred to and made a part of this order.

The premises considered, it is *ordered* by the Commission that the respondent, Coffeeville Bridge Company, be and it is hereby ordered, directed, and required to desist from any further issue and sale of its securities to the public in Alabama until after it has complied with the provisions of § 9744 *et seq.*, of the Code of Alabama, of 1923. The respondent and its officers are hereby put upon notice that if any further issue and sale of its securities are made in this state in violation of the law, such matter will be promptly reported to the attorney general of this state as soon as it comes to the attention of this Commission.

PENNSYLVANIA PUBLIC SERVICE COMMISSION

Fullington Auto Bus Company

v.

Edwards Motor Transit Company

[Complaint Docket No. 8525.]

Interstate commerce — Motor carrier — Interstate tickets to evade state control.

1. An interstate motor carrier was held to be operating in intrastate commerce without authority, fined $500, and ordered to desist from such operations, where it was shown that tickets purporting to be for interstate carriage were sold to passengers known to be destined for points within the state, p. 399.

Interstate commerce — Interstate tickets to evade state control — Imputation of guilty knowledge — Principal and agent.

2. A motor carrier is presumed to have knowledge of actual destinations within the state desired by passengers purchasing tickets to points in another state where such destinations are made known to ticket-selling commission agents of the carrier, p. 399.

[February 2, 1931.]

COMPLAINT *by one motor carrier against alleged irregular operations of another; sustained.*

By the COMMISSION: The respondent is a Pennsylvania corporation created with the approval of this Commission for the transportation of passengers in twenty-eight counties in this state. It has several certificates of public convenience authorizing it to engage in common carriage within this state, and also operates over certain interstate routes. Complaint is made that it is engaged in intrastate carriage in violation of law between points in Pennsylvania on its interstate routes, which are not covered by its existing intrastate certificates. Respondent contends that it is in good faith operating over these routes in interstate commerce only and that any transportation intrastate shown is the result of its inability to control employees and passengers. Circular instructions sent to respondent's employees and agents appear in evidence, warning against the sale of tickets for the transportation of passengers between points within the state.

Complainant's evidence of intrastate operation is based upon trips made by various people between points entirely within the state, and tickets purchased from agents of respondent who had knowledge of the intrastate

destinations of the purchasers, and packages transported by respondent's busses between intrastate points.

The following is a list of the violations offered in evidence:

Date	Passenger's Origin	Passenger's Destination	Ticket Destination
Sept. 24, 1930	Brookville	Williamsport	Elmira, N. Y. (not used)
Sept. 24, 1930	Brookville	Philadelphia	Philipsburg, N. J. (transfer)
Sept. 29, 1930	Dubois	Harrisburg	Parkton, Md.
Sept. 30, 1930	Williamsport	Clearfield	Youngstown, O.
Sept. 27, 1930	Clearfield	Mt. Carmel	Philipsburg, N. J.
	Mt. Carmel	Clearfield	Youngstown, O.
	Easton	Dubois	Philipsburg, N. J. (origin)
Oct. 3, 1930	Williamsport	Harrisburg	Maryland State Line
	Harrisburg	Williamsport	Elmira, N. Y.
Nov. 23, 1930	Brookville	Lock Haven	Elmira, N. Y.
Sept. 27, 1930	Brookville	Philipsburg, Pa.	(2 shipments of flowers)

[1, 2] As will be noticed from the above, no tickets were sold for intrastate transportation and, were that the only consideration, there would be no ground for complaint. But there is more to consider than the mere gesture of selling a ticket for a point in another state. Every witness for complainant, who in most instances was also a passenger, testified that he asked the respective ticket agent for transportation between two points entirely within the state. In each case of a ticket sale it appears that the agent knew of the destination of the purchaser. It, therefore, appears that the selling of the tickets to points outside of the state was done for the purpose of giving the intrastate transportation the color of an interstate movement. This method of the evasion of law was covered by the United States Supreme Court in Sprout v. South Bend (1928) 277 U. S. 163, 72 L. ed. 833, 48 Sup. Ct. Rep. 502, where, at p. 168, Mr. Justice Brandeis said:

"The distance from the north city limits of South Bend to Niles is about nine miles. Half of this distance lies within Indiana. Along the highway traversed within that state lie many suburban residences and one village tributary to South Bend. Sprout purported to offer transportation from that city only to persons destined to points in Michigan. He required that all passengers from South Bend pay the fare to some Michigan point. But, in fact, he served suburban passengers. He made stops habitually at points within Indiana in order to permit passengers from South Bend to leave the bus before the state-line was reached. The legal character of this suburban bus traffic was not affected by the device of requiring the payment of a fare fixed for some Michigan point or by Sprout's professing that he sought only passengers destined to that state. The actual facts govern. For this purpose, the destination intended by the passenger when he begins his journey and known to the carrier, determines the character of the commerce. Compare Philadelphia & Reading R. Co. v. Hancock (1920) 253 U. S. 284, 64 L. ed. 907, 40 Sup. Ct. Rep. 512; Baltimore & O. S. W. R. Co. v. Settle (1922) 260 U. S. 166, 171, 67 L. ed. 189, 43 Sup. Ct. Rep. 28. The suburban traffic was intrastate commerce."

Respondent in its brief cites the

Sprout Case above referred to and contends that it does not apply to this case for the reason that in the Sprout Case the intention of the passenger was known to the carrier, whereas in this case the intention of the passenger was not made known to the carrier. We cannot agree with this contention. In every case of a ticket sale testified to, it was shown that respondent's ticket agent was informed that the destination of the passenger was an intrastate one. Respondent admits that this would constitute knowledge on the part of the respondent if the relationship between the ticket agent and respondent were that of direct agency. As the facts are, it contends the ticket agents are commission agents only and, as such, sell tickets on commission for respondent and other carriers as well. We fail to see, so far as the question here involved is concerned, any difference between a commission agent and one who sells tickets for one carrier only. Certainly, respondent is not presumed to have knowledge of the acts of the ticket agent while performing duties for another carrier, but while he is selling a ticket for carriage over respondent's lines we cannot perceive that any but the usual relationship between principal and agent exists. In several instances the operator of the bus also knew of the origin and destination of the passenger. Such being the case, it is quite evident that respondent knowingly attempted to evade the Commission's regulations by means of this subterfuge.

The record also shows without denial by respondent the transportation of two separate shipments of flowers between points within the state.

From a consideration of the whole record the Commission finds and determines that respondent has violated the provisions of the Public Service Company Law on ten occasions,—on September 27, 29, 30, October 3, and November 23, 1930, in transporting persons and property in intrastate commerce in Pennsylvania without the certificate of this Commission in approval thereof. Under the provisions of Art. VI, § 35 of said act, the respondent company has forfeited to the commonwealth of Pennsylvania, on account of said violations of law, the sum of $500; Therefore,

Now, to wit, February 2, 1931, It is *ordered:* That the complaint be and is hereby sustained.

It is *further ordered:* That the Edwards Motor Transit Company, respondent, its agents, servants, and employees, forthwith cease and desist from operating a motor vehicle or motor vehicles, as a common carrier of persons in intrastate commerce, within the commonwealth of Pennsylvania, between points not authorized by its certificates of public convenience, unless and until it shall have obtained from the Commission a certificate of public convenience in approval thereof, in accordance with the provisions of the Public Service Company Law.

It is *further ordered:* That the secretary of this Commission, unless within fifteen days from date hereof said sum of $500 shall be paid to the commonwealth of Pennsylvania, certify a copy of this record and the findings of the Commission to the attorney general for action at law.

:: PROFESSIONAL DIRECTORY ::

STATEMENT OF OWNERSHIP

Statement of ownership, management, circulation, etc., of Public Utilities Fortnightly, published bi-weekly at Rochester, N. Y., required by the Act of Congress of August 24, 1912.

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PUBLIC UTILITIES REPORTS, INC.
Henry C. Spurr, Editor

Sworn to and subscribed before me this 21st day of March, 1931.
Margaret T. Mahoney.

(My commission expires March 31, 1933.)

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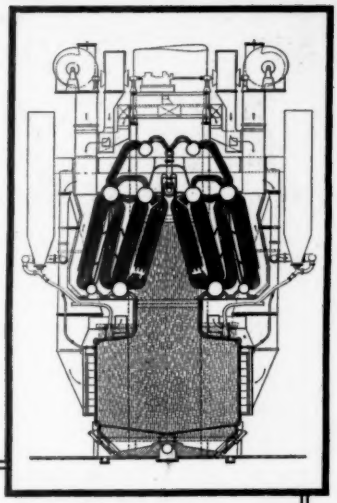
A Million pounds of Steam per hour at 86.5% efficiency



HEAT BALANCE of
No. 7 BOILER OUTPUT 1,000,000 lb. per hr.

	B. t. u.	Per cent
Loss due to moisture in coal	12	0.1
Hydrogen	453	3.0
Dry chimney gases	1,137	7.7
Combustible in refuse	73	0.5
Moisture in air	30	0.2
Radiation and unaccounted for	294	2.0
Total losses	1,998	13.5
Efficiency and heat to boiler	12,772	86.5
Total	14,770	100.0

The above heat balance is from paper presented at the Summer Convention of the A.I.E.E., Toronto, Ont., Canada, June 23-27, 1930, by C. B. Grady, Mechanical Engineer, W. H. Lawrence, Chief Operating Engineer, and R. H. Tapscott, Electrical Engineer, of The New York Edison Company.

Boiler Unit No. 7 is one of three Combustion Engineering Steam Generating units installed at the East River Station of The New York Edison Company.

This heat balance shows the results of a twelve hour test run, where evaporation averaged 1,000,000 lb. per hour. For peaks, this unit has operated at the rate of 1,270,000 lb. per hour.

Analysis of the coal used in the test of No. 7 Boiler:

Proximate Analysis (dry basis)

Volatile	21.5 per cent
Fixed Carbon	72.4 per cent
Ash	6.1 per cent
B.t.u.	14,770. per cent
Sulphur	1.4 per cent

(Moisture in coal as fired—1 per cent)

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